TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 450.

JOHN W. CANNON, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JULY 11, 1874.

SUPREME COURT OF THE UNITED STATES.

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M. P. JULIAN,
Dep'y Clerk.

CITY OF NEW ORLEANS
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JNO. W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 2467.

Appeal from the superior district court, parish of Orleans.

W'm W. King, esq'r', for plaintiff and appellant; Geo. S. Lacey, esq'r', city attorney, for appellee.

1 STATE OF LOUISIANA:

Eighth district court for the parish of Orleans. No. 545.

JOHN W. CANNON
versus
THE CITY OF NEW ORLEANS.

Petition for injunction.—Filed May 9, 1871.

To the honorable H. C. Dibble, judge of the eighth district court for the parish of Orleans:

The petition of John W. Cannon, who resides in New Orleans, against the city of New Orleans, respectfully represents:

That he is the master and owner of steamer Rob't E. Lee, a vessel duly enrolled in the port of New Orleans, and licensed under the acts of Congress to carry on the coasting trade of the United States.

That for several years past the said vessel has been engaged in the carrying-trade on the Mississippi River, between New Orleans and Vicksburg, and St. Louis and other places situated on the said river above Vicksburg.

That within the last twelve months he has paid about three thousand three hundred and sixty dollars to the city of New Orleans, for the privilege of landing and mooring his said vessel at the port of New Orleans. That said sum was exacted from him by the said city, through its officers appointed for the purpose under the forms of law, and under municipal ordinances enacted to enforce the payment of said sums.

That he was coerced into the payment of said sums from the apprehension, which was caused by the conduct of the said officers of the city, that if he did not pay the same his vessel would be seized, and that thereby he would be subjected to great expense, loss, inconvenience, and annoyance, and that a multiplicity of suits would be brought
2 against him, one for each trip his vessel made to New Orleans, in justices' courts of inferior jurisdiction.

That he has been advised by his counsel, and believes, that said sums were illegally exacted from him, and that he has paid what was not

justly due by him; that, in consequence thereof, he is entitled to recover back from the said city the amounts so paid.

The petitioner further alleges that the city of New Orleans was bound by law to have kept the levee, or landing in front of the said city, in good order, and to furnish the necessary facilities for the loading and discharging the cargoes brought by his vessel to New Orleans. That notwithstanding this legal obligation, the said city neglected the wharves and landings to such an extent that petitioner was injured and damaged thereby to the amount of eight hundred and fifty dollars, as is more particularly set forth in the annexed account. That he is therefore entitled to recover the said sums from the said city.

The city demands the said sums of money from the petitioner, under and by virtue of certain ordinances of the city council, to the following purport and effect:

Art. 1326. From and after the passage of this ordinance, the levee or wharfage rates on ships or other sail-vessels, steamships, steamboats, flats, barges, and other crafts, shall be fixed as follows:

On all ships or sail-vessels of one thousand tons and under, twenty-five cents per ton.

Excess of tonnage over one thousand tons, twenty-five cents per ton.

On all steamships, seventeen and one-half cents per ton.

On all steamboats of one thousand tons and under, fifteen cents per ton.

Excess of tonnage over one thousand tons, ten cents per ton.

On each flat-boat not measuring over eighty feet, ten dollars.

On each flat-boat measuring over eighty feet to one hundred feet, twelve dollars.

On each flat-boat measuring over one hundred feet, fifteen dollars.

On each barge more than seventy feet long, twelve dollars.

On each barge less than seventy feet, and not exceeding fifteen tons burden, eight dollars.

On each steamboat hull used as a barge, twenty-five dollars.

On each scow and coastwise pirogue, two dollars. For every flat-boat, barge, or other vessel, not including steamboats employed in transportation of brick, lumber, or other building materials, or in bringing produce from this and neighboring parishes to the city, and measuring not over twenty-five tons, the levees and wharfinger dues shall be thirty dollars per annum.

From twenty-five to eighty tons, sixty dollars per annum.

Over fifty, and not exceeding seventy-five tons, eighty dollars per annum.

Over seventy-five, and not exceeding one hundred tons, one hundred and twenty-five dollars per annum.

Over one hundred tons, two hundred dollars per annum.

ART. 1327. Every proprieter of any small craft of the description above mentioned, who shall desire to enjoy the privilege accorded by the present ordinance, must apply to the treasurer of the city of New Orleans for the purpose of obtaining a license, approved by the mayor and countersigned by the comptroller, which license shall specify the number or name of such craft, which shall be painted in a conspicuous place on the side of said craft.

3 ART. 1328. Hereafter it shall not be lawful for any pirogue, flat-boat, barge-boat, or keel-boat to remain in port longer than eight days, under the same provisions and penalties contained in article three of an ordinance of the general council, approved May 26, 1843.

ART. 1329. That the payments on levee-dues, on ships or sailing-

vessels, steamships, or steamboats, shall be exacted and collected by the collectors of levee-dues, and an extra duty of one-third these rates shall be paid by all sail-vessels or steamships which may remain in port over two months, the same to be recovered at the commencement of the third month; and if over four months, an additional duty of one-third these rates. Steamboats shall be entitled to remain thirty days in port after the payment of the dues. All over five days to pay an additional duty of two dollars per day.

ART. 1330. Resolved, that ordinance No. 279, approved September 21, 1852, be, and the same is hereby, amended by adding thereto the words "per term of every two months" at the conclusion of said ordinance; and that said ordinance is hereby distinctly understood as requiring payment and exacting all of said levee-dues at the rates therein prescribed, for all the time said described vessels remain at the wharves of the port of New Orleans from arrival to departure.

ART. 1331. From and after the first of January, 1853, the levee or wharfage dues on ships and other decked vessels, and steamships arriving from sea, shall be fixed as follows: On all vessels of one thousand tons and under, twenty cents per ton; and excess of tonnage over one thousand tons, fifteen cents per ton. On all steamships navigating the Gulf of Mexico or the ocean, fifteen cents per ton.

ART. 1332. From and after the first of January, 1853, the levee-dues on all steamboats which shall moor or land in any part of the port of New Orleans shall be fixed as follows: Ten cents per ton, if in port not over five days; and five dollars per day after said five days shall have expired; provided, that boats arriving and departing more than once in each week shall pay only seven cents per ton each trip.

ART. 1333. From and after the first of January, 1853, the levee-dues on flat-boats, barges, etc., fully or in part laden with produce, materials, or merchandise of any kind, shall be as follows: Flat-boats measuring more than eighty feet, eight dollars; eight to one hundred feet, ten dollars; one hundred feet and over, thirteen dollars. On each barge measuring less than seventy feet and not over twenty tons, eight dollars. On each steamboat hull used as a barge, twenty-five dollars. On each scow or coasting pirogue, two dollars.

ART. 1334. That so much of all existing ordinances as are inconsistent with the provisions of this ordinance be, and are hereby, repealed.

ART. 1335. That the ordinance regulating levee and wharfage dues, (No. 640,) passed February 11, 1853, be so amended that the second section reads thus: "Ten cents per ton if in port not over five days, and five dollars per day after said five days shall have expired;" provided that boats arriving and departing more than once in each week shall pay only seven cents per ton each trip; and provided further, that boats making three trips per week shall pay five cents per ton each trip.

4 *City of New Orleans to steamer R. E. Lee.*

Jan'y	25.	To difference in 42 bales cotton, turned over for account of boat, at $10	$420
Feb'y	1.	To " " 12 bales cotton, at $10	120
"	7.	" " " 3 " " "	30
Jan'y	11.	" unloading at night we paid extra labor	125
"	18.	Same	80
"	25.	Same	75
			$850

Petitioner alleges that under the foregoing ordinance his vessel, the Robert E. Lee, being a vessel of eight hundred and forty tons burthen, hull measurement, and not arriving and departing more than once a week, is subjected to a tax or charge of eighty-four dollars for every trip she makes to New Orleans.

That she averages about forty trips to New Orleans per year, and consequently is subjected to charges of three thousand three hundred and sixty dollars per annum.

The petitioner alleges that he is informed and believes that the said ordinances of the said city are illegal and void; that they violate the constitution and laws, both of the State and the United States.

That the levee in front of the city of New Orleans is a public place, the use of which is common to all the inhabitants of the city, and even strangers, and most especially to citizens of the other States in the Union.

That the attempt on the part of the said city to put onerous restraints and charges upon the exercise and use of the rights thus secured is illegal.

That the said ordinances, on their face, do not purport to be founded upon any supposed advantages or benefits conferred on the petitioner by the city of New Orleans. They were not and are not imposed upon him on any such grounds, but are in fact impositions laid upon him for the purpose of raising revenue for the city; that the revenue thus raised enters the coffers of the city, and is used for the general purposes of the city administration, in the same manner as other revenue derived from legitimate taxation.

That the revenue thus realized by the city amounts to a very large sum annually, which is thus illegally levied upon the commerce of the country, and particularly upon the trade and navigation of the Mississippi River.

The petitioner believes and alleges that the foregoing ordinances of the city council of New Orleans are in violation of the second paragraph of section ten, article first, of the Constitution of the United States, which declares, "No State shall, without the consent of Congress, lay any duty of tonnage."

Also of the fifth paragraph, section nine, article first, which provides as follows: "Nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another."

Also, the third paragraph, section eight, of article first, which declares Congress shall have the power to regulate commerce with foreign nations and among the several States.

That said ordinances are in violation of the acts of Congress
5 regulating commerce between the States, granting licenses to vessels engaged in the coasting-trade, and especially to the act of Congress of 1812, admitting Louisiana into the Union, and the act of 1811, providing for the same.

For these ordinances are illegal, null and void.

Petitioner alleges that, notwithstanding the illegality of said ordinance, the said city has heretofore imposed the collection of the charges imposed by them, greatly to the injury of the petitioner, and still claims the right to enforce them in future. That, for this purpose, they have instituted suit against him in a justice court, for the charges on a single trip of his vessel, and threaten to annoy, harass, and perplex him with a multiplicity of small suits before inferior tribunals for each trip of his vessel to New Orleans, thus imposing an intolerable grievance and great expense upon him.

The petitioner is advised and believes that the said city has no right whatever to exact the said charges imposed by the said ordinance; that they are illegally interfering with and depriving him of the rights he has to the use of the said levee for his vessel, and for the benefit of trade and commerce; and that the said city will continue to harass, annoy, and disturb the petitioner in the possession and enjoyment of his legal rights upon the said levee, and upon the shore of the river Mississippi, unless restrained therefrom by an injunction from this honorable court.

Wherefore petitioner prays that, the annexed bond and affidavit being considered, that an injunction be issued from this honorable court restraining the said city of New Orleans from enforcing the said ordinances heretofore described, and from all attempts to collect from the petitioner the charges imposed by said ordinances, during the pending of this suit, and that on the trial thereof, that the said injunction be made perpetual. That said ordinances be declared unconstitutional, null and void, and that after all due proceedings, the said city of New Orleans be condemned to pay to petitioner the sum of four thousand two hundred and ten dollars ($4,210) for the items and reasons heretofore set forth, and for all other relief, etc.

ELMORE & KING,
Atty's for Plaintiff.

J. W. Cannon, being duly sworn, states that he is the plaintiff in the above petition, and that the facts therein stated by him are true, and the facts stated upon the information of others, he believes to be true.

J. W. CANNON.

Sworn to and subscribed before me this ninth day of May, 1871.

W. L. EVANS,
Second Justice Peace, Parish of Orleans, Louisiana.

Let the defendant be ordered to show cause, on Wednesday the 17th day of May, why an injunction should not issue as prayed for within. Upon plaintiff giving bond in the sum of five hundred dollars let defendant be ordered to desist from the acts complained of until the hearing of this rule.

New Orleans, May 9, 1871.

HENRY C. DIBBLE, *Judge.*

6 *Bond for injunction.—Filed 10th May, 1871.*

Know all men by these presents, that we, John W. Cannon as principal and John Wilson as security, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto the city of New Orleans, in the sum of five hundred dollars, lawfully money of the United States of America, to be paid to the said city of New Orleans, heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents, sealed with our seals and dated the 11th of May, in the year of our Lord 1871.

Whereas the said Cannon has this day presented a petition to the honorable the eighth district court for the parish of Orleans, praying a writ of injunction against the said city:

Now, the condition of the above obligation is, that we, the above bound J. W. Cannon and John Wilson, will well and truly pay to the said city, the defendant in suit, all such damages as the city may recover aga

us in case it should be decided that the injunction was wrongfully obtained.

J. W. CANNON.
JNO. WILSON.

Signed, sealed, and delivered in the presence of

W'M. W. KING.

Rule nisi.

Eighth district court for the parish of Orleans, the State of Louisiana.

JOHN W. CANNON
vs.
THE CITY OF NEW ORLEANS. } No. 545.

To the city of New Orleans, through Benj. F. Flanders, mayor, greeting:

You are hereby commanded, in the name of the State of Louisiana, and of the eighth district court for the parish of Orleans, to show cause, on Wednesday, seventeenth day of May, 1871, at 10 o'clock a. m., why an injunction should not issue as prayed for in the petition, a duly certified copy of which accompanies this rule.

And in the mean time you are ordered to desist from the acts complained of in the said petition, until the hearing and disposition of this rule. And herein fail not under penalty of the law.

Witness the honorable Henry C. Dibble, judge of our said court, at the city of New Orleans, this eleventh day of May, in the year of our Lord eighteen hundred and seventy-one, and in the ninety-fifth year of the Independence of the United States.

O. M. TENNISON,
Deputy Clerk.

7 *Sheriff's return.*

Received May 11, 1871, and on the twenty-fifth day same month and year, I served a true copy of the within rule nisi and accompanying petition on the city of New Orleans, through its mayor, B. F. Flanders, esq., in person.

Returned the same day.

F. PFISTER, *D'y Sheriff.*

Citation.

State of Louisiana, eighth district court for the parish of Orleans, in the city of New Orleans.

JNO. W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

To city of New Orleans, through B. F. Flanders, mayor:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the honorable Henry C. Dibble, judge of the said court, the eleventh day of May, in the year of our Lord 1871.

J. D. TAYLOR, *Dep. Clerk.*

Sheriff's return.

Received May 11th, 1871, and on the 12th day, same month and year, I served a true copy of the within citation and accompanying petition on the city of New Orleans, through its mayor, B. F. Flanders, esq., in person.

Returned the same day.

F. PFISTER, *Dep. Sheriff.*

Rule absolute.—Minutes, May 17th, 1871.

J. W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

The rule nisi in this case, fixed this day for trial, came on—present, Elmore & King, for plaintiff in rule—when, after hearing counsel, the court, considering the law and the evidence to be in favor of the plaintiff in rule—

It is ordered, that said rule be made absolute; that a writ of injunction issue as prayed for in the petition in this case, on plaintiff furnishing bond with good and solvent security, conditioned as the law directs, and that the bond herein, filed May 10th, stand as the new bond.

8 *Motion to bond.—Minutes 17th May*, 1861.

JOHN W. CANNON
vs
CITY OF NEW ORLEANS. } No. 545.

On motion of Rufus Waples, attorney for defendant, and on suggesting that the setting aside of the injunction herein would not work irreparable injury to the plaintiff, and on further suggesting that defendant is exempt by law from giving bond and security in such case, it is ordered, that the injunction granted herein be set aside as though bond and security had been given by the defendant.

Answer.—Filed July 1, 1871.

Eighth district court, parish of Orleans.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

Now into court comes the city of New Orleans, by George S. Lacey, city attorney, and for answer to plaintiff's petition, herein filed and served, denies all and singular the allegations therein contained, except such as may be hereinafter admitted.

And for further and special answer this respondent denies that the said plaintiff has paid any sum of money whatever to this respondent, for privilege of landing and mooring his vessel at the port of New Orleans, except such sum or sums as were equitably and legally due to this respondent from the said plaintiff, for levee or wharfage dues.

Further, this respondent denies that the said plaintiff was coerced into the payment to this respondent, or to her officers or employers, of any sum or sums of money whatever; and avers that all payments

made by the said plaintiff have been made voluntarily, and in the discharge of a legal and equitable obligation under which the said plaintiff was placed to this respondent; and that the said plaintiff is without the shadow of the right, either at law or in equity, to demand the re-imbursement of any money paid by the said plaintiff to this respondent.

Further, this respondent says that she was not bound by law to have kept the levee and landing in front of the city of New Orleans in good order, and to furnish the necessary facilities for receiving and discharging cargoes of vessels landing at the wharves of the said city, that matter being entirely within the legislative control of this respondent for her to act in the premises as she might deem right and proper.

That notwithstanding no legal obligation so to do rested upon this respondent, she has, nevertheless, for many years past, and during the time referred to by petitioner, constructed and maintained at great expense, wharves and other works necessary for landing and unloading of vessels, and to secure a convenient access to them, and whatever money may have been paid by the said plaintiff to this respond-
9 ent, was paid for the use of the wharves and other works aforesaid, and for no other purpose whatsoever.

Further, this respondent says, that she was by law authorized to impose a wharfage charge for keeping the wharves in a proper condition for the safe and expeditious shipping and loading of merchandise; that she did, in accordance with her legal right and authority, impose a certain amount upon all vessels loading and unloading at the wharves aforesaid; and that the amount collected from the said plaintiff was for levee or wharfage dues arising from the use of the said wharf.

This respondent denies that the said wharves and other works were at any time in bad order or condition, and that the amounts paid by said plaintiff for levee or wharfage dues were disproportioned to the benefit received by the said plaintiff. Respondent says, if such was the case, those facts cannot be enquired into by a court of justice, the time and manner of erecting and maintaining said wharves and other works and the tariff of charges for the use of the same, being purely an administrative matter, under the sole control of municipal authorities and with which a court will not interfere.

Further answering, this respondent denies that the resolutions and ordinances referred to in plaintiff's petition are illegal, unconstitutional, or void.

Specially denies that the construction of wharves or landings and the exaction of levee-dues to meet the costs of constructing and maintaining the wharves, is an interference with a locus publicus.

Therefore, respondent prays to be hence dismissed with costs, etc.

GEO. S. LACEY,
City Attorney.

Motion and affidavit for commission.—Filed October 28, 1871.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

W'm W. King, being duly sworn, states that he is attorney at law for plaintiff in the above case; that Capt. T. P. Leathers and J. W. Cannon are material witnesses for the plaintiff, and that they are both about to depart from the State before the trial of the case. Wherefore a com-

mission is asked to be directed to Thomas Lynne, clerk of this court, or any judge or justice of the peace in the parish of Orleans, to take the testimony of said witnesses.

WM. W. KING.

Sworn to and subscribed before me this 28th Oct., 1871.

ROB'T LYNNE,
D'y Clerk.

10 *Notice to take testimony.*

State of Louisiana, eighth district court for the parish of Orleans.

J. W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

To GEO. S. LACEY, *City Attorney:*

SIR: Please to take notice, that the testimony of J. W. Cannon, plaintiff, will be taken under commission at the law-office of W. W. King, esq., No. 28 Natchez street, New Orleans, La., on Tuesday, the 31st day of October, 1871, at 12 o'clock m.

J. D. TAYLOR,
D'y Clerk.

Sheriff's return.

Received Oct. 30th, 1871, and on the 30th day of October, 1871, I served a copy of the within notice of trial on Geo. S. Lacey, esq., personally.

Returned same day.

J. A. GANDOLFI,
D'y Sheriff.

Notice to take testimony.

State of Louisiana, eighth district court for the parish of Orleans.

J. W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

To GEO. S. LACEY, *city attorney:*

SIR: Please to take notice, that the testimony of T. P. Leathers, a witness for the plaintiff, will be taken under commission at the law-office of W. W. King, esq., No. 28 Natchez street, New Orleans, La., on Friday, the 3d day of November, 1871, at 12 o'clock m.

J. D. TAYLOR,
D'y Clerk.

Sheriff's return.

Received, Oct. 30th, 1871, and on the 30th day of Oct., 1871, I served a copy of the within notice of trial on Geo. S. Lacey, esq., personally.

Returned same day.

J. A. GANDOLFI,
D'y Sheriff.

Continuance.—Minutes 7th November, 1871.

J. W. CANNON
vs. } No. 545.
CITY OF NEW ORLEANS.

This case, fixed for this day, was, on motion of counsel for plaintiff, ordered to be continued to the 16th inst., at 10 o'clock a. m.

11 *Testimony and note of evidence.—Filed November* 16, 1871.

Eighth district court.

JOHN W. CANNON
vs. } No. 545.
CITY OF NEW ORLEANS.

GEO. H. KIRK, sworn for plaintiff.

Question. You know the steamboat Rob't E. Lee?

Answer. Very well.

Question. It belongs to Capt. Cannon?

Answer. Yes, sir.

Question. What business is she engaged in?

Answer. She runs three-fourths of the year to Vicksburg as a weekly packet.

Question. Do you know that during the past year she has paid the wharfage taxes?

Answer. I do that.

The plaintiff offers in evidence, the compromise of 1820, passed between Edward Livingston and others and the city of New Orleans, before Jules Lavergne, notary public, on the 20th of September, 1820; and, by consent of counsel, the printed translation of the same to be found, commencing on page 43 of the printed record in this court, No. 29 of the docket, between the New Orleans, Mobile and Chattanooga Railroad and the city of New Orleans, is to be used.

The plaintiff offers in evidence, the city ordinance marked A B, now filed; also, the second section of an ordinance, approved the 11th of February, 1853, a copy of which, marked, A C, is now filed; also, document A D. Counsel for the defence objects to the introduction of any evidence as to the amount of revenue received; objection overruled.

The plaintiff offers in evidence Table F, taken from the annual message of the mayor, for the year 1871, headed "revenue from wharves of the four districts, and expenditures of the same from April 12, 1852, to April 4, 1870," all except one item of the expenditures, "amount of certificates issued and entered on the following debt, $100,000, and second, "notes returned to the lessees of wharves by compromise with the finance committee in 1862, $435,300. He, plaintiff, objects to the two items as incorrect, and reserves the right to disprove them.

W. W. KING, sworn for plaintiff, states: That with regard to the item of $435,300 of notes returned to lessees in 1862, he was at that time attorney for several of the principal lessees of the wharves; was familiar with their leases, wrote an argument to the city urging the city, in consequence of the war, to relieve them from the obligations they were under in their leases, and that the city finally cancelled their leases, and

as a consequence of that, returned to them the notes which are still outstanding for the unexpired term of their leases. That item was not, in my opinion, in any sense of the word, an expenditure for the wharves at all; it is erroneously placed in the account of the expenditures of the city. If the city had credited these notes as receipts, then, when they were returned, it would have been a proper counter-charge as expenditures; but it does not appear on the account that these notes were credited as receipts from the wharves. With regard to the item
12 of $100,000 as stated here in the tables, it is difficult to understand what is meant by it, and it appears to be a double charge; because, if the previous items of expenditures be correct down to the year 1870, a charge of $100,000 would be manifestly a duplicate charge of the same thing, because it must have been included in the previous list of the total expenditures.

Plaintiff offers in evidence, from the report of the department of public accounts, published by authority of the city, an exhibit of the cash expenditures of the city of New Orleans, from April 4th to December 31st, 1870. "Bureau of wharves and landings, $52,627.96; also, from the same report, an exhibit of the cash receipts of the city of New Orleans, from April 4th to December 31st, 1870, inclusive. "Levee dues $148,793," also, from the same report, for the year 1871, published by authority of the city council from the balance-sheet, up to 30th of June, 1871.

Expenditures:

"Wharves and landings	$9,383 00"
Receipts, "levee dues	166,843 97"
And from the same report, expenditures, "Morgan wharf contract	33,914 35
Receipts	44,201 00

Also from the same report, an exhibit of cash receipts by the city of New Orleans for the six months ending 31st of December, 1871,

Receipts, "levee dues	$124,000
Expenditures for the same time, for wharves and landings; salaries of employees in bureau of wharves and landings, wages in bureau of wharves and landings, general service, repairs to wharves and landings	39,500

Plaintiff offers in evidence, from the annual budget, by the city council of New Orleans, of their estimated receipts and expenditures, for the year 1872: Receipts from levee dues $300,000

Expenditures on wharves and landings	82,560
Also expenditures for general service, wages, etc.	7,000

Plaintiff offers in evidence the various leases made by the city of New Orleans in 1855, to certain individuals, of revenues arising from the collection of wharfage allowed by the city ordinance—five leases, marked respectfully, L^1, L^2, L^3, L^4, L^5, and L^6, now filed.

(Objected to on the ground of being immaterial to the issue.)

Plaintiff also offers in evidence six leases of 1868, the 31st of August, marked respectively, LL^1, LL^2, LL^3, LL^4, LL^5, and LL^6; also, statement of W. H. Bell, city surveyor, marked S, now filed; also testimony of Captain T. P. Leathers and Captain J. W. Cannon, taken under commission.

Defendant offers in evidence the testimony of W. H. Bell, city surveyor, now filed; also, statement marked SS, now filed.

13 *Order appointing translator.*

State of Louisiana, eighth district court, parish of Orleans.

Monday, the 30th day of February, 1871. Present, the honorable Henry C. Dibble, judge.

N. O., M. and Chat. R. R. Co. *vs.* City of New Orleans et als. } No. 27.

It is ordered by the court that A. J. Villeré, esq., be appointed as a translator herein, to translate "Document A E," filed January 10th, 1871, written in the French language, said document purporting to be "An act of donation by the owners of the batture in front of faubourg St. Marie, to the mayor and aldermen and inhabitants of the city of New Orleans, and that said Villeré be notified to appear and qualify as such.

A true extract from the minutes.

ROBERT LYNNE,
Deputy Clerk.

Compromise of 1820.

In the city of New Orleans, in the State of Louisiana, on the twentieth day of September, one thousand eight hundred and twenty, and the forty-fifth of the Independence of the United States of America, before me, Hughes Lavergne, notary public, duly commissioned in and for the city and parish of New Orleans, therein residing, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Messrs. Edward Livingston, Jean Gravier, Louis Barthelemi Macarty, Cristophe Toledano, Vincent Rillieux, Toussaint Mossy, Elie Victor Jourdain, Manette St. Armand, free woman of color and of lawful age, Henry McCall, herein acting in his own behalf and on behalf of Joseph J. Winter, his partner; Etienne Mazureau, as agent and attorney in fact of Alexandre Labranche, under power of attorney duly exhibited to the undersigned notary; the honorable James Pitot, herein acting in the name and on behalf of Bertrand Gravier, jr., and of Miss Jeanne Gravier, daughter of full age, and also in the name and on behalf of Miss Jeanne Bordier, wife of Jean Mathieu Helant Petit, all residing in France, by virtue of powers of attorney and supplementary power of attorney which the said Mistress Petit had executed in favor of Nicholas Alphonse Desmare by act before Deschamps and his colleague notaries at Bordeaux, under date of the sixteenth day of July, eighteen hundred and seventeen, and twenty-fifth day of September, eighteen hundred and eighteen; and of that which the said Bertrand Gravier, jr., and Miss Jeanne Gravier had executed in favor of the honorable Pierre Derbigny, by act passed before Baguaire and his colleague notaries at Bergerac, on the eighteenth of June, one thousand eight hundred and seventeen; all of which powers of attorney are deposited in the office of Michel de Armas, notary public in this city, and have been transferred to the said Mr. James Pitot by the said Messrs. Desmare and Derbigny by acts passed under date of the fifth and tenth of June last, and deposited in the same office; Barthelemi Lafon, in the name and as testamentary executor of the late Pierre Delabigarre,
14 and Mr. John W. Oddie, by virtue of a general and special power

of attorney of Mrs. Margaret, widow of the late Pierre Delabigarre; and of Maria Louisa Delabigarre, widow of P. Hewart, and of Miss Amarylis Laura Delabigarre; all of which appearers reside in New Orleans—on one part; and the honorable Joseph Roffignac, mayor of the city of New Orleans, therein residing, acting and stipulating in behalf and in the name of the mayor, aldermen, and inhabitants of New Orleans, by virtue of the proceedings of the city council, under date of the thirty-first of August last, of which an authenticated copy is hereto annexed; which said first appearers, whether in their own name or in the capacities which they hold, and as actual owners of the batture in front of the suburb St. Mary, or representing said owners, wishing to favor the public in the use of the river-side which lies in front of said batture, and to facilitate the communication between the streets which will terminate at that place, have, by these presents, made a donation inter vivos and irrevocable and in the best form in which a donation may be valid, to the mayor, aldermen, and inhabitants of New Orleans, herein represented by the honorable Joseph Roffignac, mayor of the city, now present, and accepting and stipulating for the said mayor, aldermen, and inhabitants, by virtue of the authority in him vested for that purpose by the city council in the proceedings of thirty-first of August ultimo, of which a true copy is hereto annexed, of all the rights which the said donors have or may have, respectively.

1st. In all that portion of the said batture or alluvion which exists from the lower limit of the property of Mr. William W. Montgomery, and extending downwards to the limit between the city and the suburb St. Mary, and taking from the foot of the new levee exteriorly to the marginal line of the river when at its lowest stage.

2d. In the new levee which has been constructed on the whole length of the said portion of batture, as well as the ground on which it is built, such as said levee will be when it shall have been repaired, increased, and braced with wood by the said donors, as hereinafter agreed.

3d. In the ground necessary for the extension of the streets of said suburb up to the new levee, which shall be open and graded and laid with a wharf and slope on the river at the expense of said donors, as it is hereinafter prescribed by this act; and,

4th. On the ground of Tchoupitoulas street, on the whole length of said suburb, allowing said street sixty feet in width, including the sidewalks or banquettes; all of which lots so donated are not encumbered by any mortgages on the part of said donors, as appears from the certificate of the recorder of this city, dated this day, excepting the following, to wit:

Thirty thousand eight hundred and eighty-nine dollars of mortgages given by Edward Livingston in the following manner, to wit:

Twelve thousand eight hundred and twenty dollars in favor of James Johnston, on the lot number two on the plan hereto annexed, certified by Livingston and paraphed ne varietur by the undersigned notary; fourteen thousand three hundred dollars in favor of Messrs. Vincent Nolte and Laurent Millaudon, on the three lots forming the corner of Notre Dame street and of the new levee, and bearing the numbers eighteen, nineteen, and twenty on said plan.

Three thousand five hundred dollars in favor of Joseph Segura, on the lot number eleven. One thousand two hundred and sixty-nine dollars in favor of James Ramsay, on lot number thirteen of said plan, which said lots do not encroach in any manner on the ground and extensions of streets which are subject to this donation, as appears by the said plan. Furthermore, nine hundred and eighty-five dol-

lars sixty-eight cents and three-fourths, of judicial mortgages against Mr. Gravier, resulting from several judgments in favor of the following-named persons, to wit:

John Bossier, for four hundred and seventy-four dollars six cents and one-fourth, with interest; and Joseph Taboire, for the sum of two hundred and forty-five dollars eighty-one cents and one-fourth and interest, and two hundred and sixty-five dollars eighty-one cents and one-fourth and interest.

Furthermore, two thousand and sixty-seven dollars of tacit mortgages against John Linton, as surety on the bond executed in the probate court by Stephen Duncan, as curator of the succession of Hamilton Blakony.

And, finally, fifty thousand dollars of mortgages granted by Pierre Delabigarre in favor of Jean Gravier, to secure the sale of the batture.

The present donation is made with the express condition, without which it would not have taken place, to wit:

That all lots of ground which are the object of the present donation will remain inalienable and guaranteed against all seizures, either for debts or otherwise, in the hands of the corporation of New Orleans, which will never, under any pretext, as herein agree to by the mayor, aldermen, and inhabitants of New Orleans duly represented herein, be sold, exchanged, donated, or disposed of, in whole or any part thereof, in any manner whatever, or be used for other public purposes than those for which they are naturally destinated, nor to erect thereon any building or construction, with the exception, however, of the only case in which the city council would deem it proper to the public interest to authorize the erection of a fire-engine house on such portion of the batture which the city council shall select for that purpose. It is hereby agreed, nevertheless, that this restriction from erecting buildings or constructions will not be construed in such a manner as to prohibit the mayor and city council of New Orleans from establishing, or causing to be established piers or wharves, to facilitate commerce, when the said mayor and city council will deem it proper.

And in consideration of this present donation and the advantages which may derive therefrom for all parties, the said donors hereby jointly obligate themselves, by these presents, in favor of the said donees, and this by them accepted, to repair and increase the new levee thus donated, on its whole length, so that it shall have sixty feet at the top; which said levee shall be constructed in the direction of the fellow lines on the plan, hereto annexed and designated by the letters A, B, C, D, which said plan shall be paraphed ne varietur; and the said levee shall be covered with cypress wood, in the same manner as that part of the levee lying in front of the city between Conti and Bienville streets.

And the donors further obligate themselves, respectively, in favor of the donees, as accepted by them, to open and raise, at their expense, all the streets of the said suburb St. Mary, which are to be extended from Tchoupitoulas street to the new levee, as donated, and to erect at the extremity of each of said streets thus extended and outside of the levee thus given, a platform having twelve feet in length and a width equal to that of the street so extended, with an easy slope on each side; and the said donors bind themselves, by these presents, to begin immediately all the said works, from the date of the present act, and this in the following manner, to wit:

The works for the repairs, increase, and covering of the levee above mentioned, such as they are described above, to extend from the lower

limit of the suburb St. Mary, going up in such a manner that
16 they be continued without interruption as long as not obstructed by the rising of the river, and that they be completed in the term of two years from the date of the present act; and the necessary works for the filling up of the streets of the said suburb, from Tchoupitoulas street as far as the new levee, so that they be completed, and that the said extensions be practicable for carriages and carts, at the latest by the first of January, eighteen hundred and twenty-one. It is agreed between all the parties that all the works above described will be executed under the direction and approbation of the surveyor of the city; and in default of said donors beginning the said work within fifteen days from the date of the present act, the mayor and the city council shall have the right to have the works executed at the charges and expenses of the said donors, in the manner which the said mayor and city council will deem proper; and that, further, they will be empowered to seize and sell the lots of the said donors, hereinafter affected and hypothecated, for the payment of said works.

It is further agreed that until the streets aforesaid be satisfactorily filled and raised, and until the works of the levee be completed, the city council shall issue orders to enjoin the public from taking any dirt on any portion of the batture thus donated, with the exception of the space lying between a line corresponding with the extension of Girod street and the limit of the property of William W. Montgomery, and that the city surveyor shall see that the said dirt be taken in equal portions.

And it is finally agreed that, immediately after completion of said works and the acceptance of the same by the city surveyor, the maintenance and repair of the levee, platforms, streets, and slopes hereinabove mentioned shall be at the expense of the mayor, aldermen, and inhabitants of New Orleans; and furthermore, in consideration of the present donation and the advantages which may derive therefrom for all parties, the said donors obligate themselves, by these presents, to demolish, and cause to be demolished, at their charges and expenses, within one month from the date of the present act, all buildings or other wooden constructions which actually exist on the batture of suburb St. Mary, and to cause all the materials thereof to be carried away; and they are enjoined, themselves, their heirs, and assigns, by these presents, from having the power of erecting any house or building on the said batture unless the walls of the said buildings be of bricks or stones, and that they shall be roofed with tiles or other incombustible materials, under penalty, if there be any contravention of this present clause, to have the said houses or buildings which would be differently constructed torn down at their charges and expenses.

And the said mayor, aldermen, and inhabitants of New Orleans represented, as hereinabove set forth, obligate themselves, by these presents, to erect a market for the use of public marketing, which shall be situated in the suburb St. Mary; and this for and in consideration of the sum of three hundred dollars, which the said donors bind themselves by these presents to pay to the corporation of New Orleans for each lot of thirty feet front which they own on the batture of the suburb of St. Mary, without any regard for the depth of said lots, and this in their respective notes, to the order of the mayor of the city of New Orleans, at one and two years from the date of the present act, executing each one of them respectively a special mortgage on the lots to them belonging respectively on the said batture, and this for the surety of the payment of the aforesaid notes at their maturity; and

in case the sum accruing from said payments be more than sufficient to cover the expenses of the building of the said market, the mayor, aldermen, and inhabitants of New Orleans, represented as aforesaid, bind themselves, by these presents, to use the exceeding amount
17. towards defraying the expenses of the building of another market, to be used for public marketing, which shall be situated in the suburb Marigny.

And in execution of the present conventions, the said donors have immediately given and delivered, in the presence of me, notary, and the undersigned witnesses, to the honorable Joseph Roffignac, who hereby acknowledges receipt thereof, their respective notes dated this day, and to the order of the said Joseph Roffignac, mayor of New Orleans, for the lots which they own respectively on the batture of the faubourg St. Mary, in conformity with the plan hereto annexed, which notes were paraphed ne varietur, to identify them with the present act, and have been given in the following manner:

Two notes drawn by Edward Livingston, under date and to the order above mentioned; one for the sum of five thousand four hundred and eighty-three dollars thirty-three cents and one-third, payable one year after date, and the other for an equal amount of five thousand four hundred and eighty-three dollars thirty-three cents and one-third, payable two years after date; amounting together to the sum of ten thousand nine hundred and sixty-six dollars sixty-six cents and two-thirds.

Two notes drawn by Jean Gravier, of the same date, and to the same order; one for the sum of twelve hundred and forty dollars, payable one year after date, and the other for an equal sum of twelve hundred and forty dollars, payable two years after date; amounting together to the sum of two thousand four hundred and eighty dollars.

Two notes drawn by Louis Barthelemy Macarty, of the same date and to the same order, one for the sum of one hundred and fifty-five dollars, payable one year after date, and the other for an equal sum of one hundred and fifty dollars, payable two years after date; amounting together to the sum of three hundred and ten dollars.

Two notes drawn by the said Christophe Toledano, of the same date and to the same order; one for the sum of one hundred and thirteen dollars seventy-five cents, payable one year after date, and the other for an equal sum of one hundred and thirteen dollars seventy-five cents, payable two years after date; amounting together to the sum of one hundred and eighty-seven dollars and fifty cents.

Two notes drawn by the said Vincent Rillieux, of the same date and to the same order; one for the sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable one year after date, and the other for an equal sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable two years after date; amounting together to the sum of five hundred and forty-five dollars eighty-three cents and one-third.

Two notes drawn by the said Toussaint Mossy, of the same date and to the same order; one for the sum of one hundred and thirty-six dollars and twenty-five cents, payable one year after date, and the other for an equal sum of one hundred and thirty-six dollars and twenty-five cents, payable two years after date; amounting together to the sum of two hundred and seventy-two dollars and fifty cents.

Two notes drawn by the said Elie Victor Jourdain, of the same date and to the same order; one for the sum of one hundred and eighty-one dollars and twenty-five cents, payable one year after date, and the other for an equal sum of one hundred and eighty-one dollars and twenty-

five cents, payable two years after date; amounting together to the sum of three hundred and sixty-two dollars and fifty cents.

Two notes drawn by Messrs. Winter & McCall and Linton & Wil-
18 kins, and of the same date and to the same order; one for the sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable one year after date, and the other for an equal sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable two years after date; amounting together to the sum of five hundred and forty-five dollars eighty-three cents and one-third.

Two notes drawn by said Alexander Labranche, of the same date and to the same order; one for the sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable one year after date; and the other for an equal sum of two hundred and seventy-two dollars ninety-one cents and two-thirds, payable two years after date; amounting together to the sum of five hundred and forty-five dollars eighty-three cents and one-third.

Two notes drawn by the said James Pitot, in the name and as agent and attorney in fact of Jeanne Bordier, wife Petit, of Bertrand Gravier, junior, and of Jeanne Gravier, of the same date and to the same order; one for the sum of four thousand four hundred and forty-eight dollars and seventy-five cents, payable one year after date, and the other for an equal sum of four thousand four hundred and forty-eight dollars and seventy-five cents, payable two years after date; amounting together to the sum of nine thousand six hundred and ninety-seven dollars and fifty cents.

Two notes drawn by Barthelemy Lafon, in the name and as testamentary executor of late Pierre Delabigarre, of the same date and to the same order; one for the sum of four hundred and seventy dollars, payable one year after date, and the other for an equal sum of four hundred and seventy dollars, payable two years after date; amounting together to the sum of nine hundred and forty dollars.

For all which notes the honorable Joseph Roffignac, in his official capacities, gives discharge to the said donors, provided the same be paid at their maturity.

And as to the said Manette St. Amand, free woman of color, herein appearing, and donor in the present act, she preferred to exempt herself from furnishing her two notes of one hundred and fifty-five dollars each, at the term of one and two years as aforesaid, and to avoid giving a special mortgage on the lot number twelve on the plan hereto annexed, and measuring thirty-one feet front, and the depth specified on the said plan, which she possesses on the said batture, to pay immediately her respective share, amounting to three hundred and ten dollars, into the hands of the honorable Joseph Roffignac, in his official capacities, who acknowledges having received the said sum of three hundred and ten dollars for the two notes of one hundred and fifty-five dollars each, payable one and two years after date, that the said Manette St. Amand would have had otherwise to furnish; hereby declaring the said Joseph Roffignac to give, by these presents, to the said Manette St. Amand good and valid discharge for said respective share of three hundred and ten dollars.

And to secure the payment of the said notes at their respective maturity, the said donors declare giving in their own right, respectively, a special mortgage in favor of the mayor, aldermen, and inhabitants of New Orleans, on the following lots, to wit:

The said Edward Livingston has mortgaged as above-mentioned:

1. The lot No. one, of the plan hereto annexed, having one hundred

and forty-two feet eight inches front on the depth specified on the said plan;

2. The lot number 20 of said plan, having two hundred and ten feet front on the depth aforesaid;

19 3. The lot No. twenty-one of the said plan, having two hundred and forty-two feet front on the depth aforesaid;

4. The lot number twenty-two of the aforesaid plan, having two hundred and twenty feet front on the depth aforesaid;

5. The three-fourths of lot number twenty-four of the said plan, which he possesses in common with the heirs of Labigarre, the said lot having three hundred and thirty feet front on the depth above mentioned; and,

6. Finally, the three-fourths of lot number twenty-five of the said plan, which he possesses in common with the same heirs, which lot has forty-four feet front on the depth aforesaid. The whole to secure the payment of ten thousand nine hundred and sixty-six dollars sixty-six cents and two-thirds amount of the notes above mentioned, drawn by him as aforesaid.

The said Jean Gravier has mortgaged in the same manner the one-fourth of the lot number twenty-three, designated on the aforesaid plan, which he possesses in common with the heirs of Gravier, the said lot having four hundred and ninety-six feet on a depth as specified on the aforesaid plan; and this to secure the payment of the sum of one thousand two hundred and forty dollars, amount of the notes drawn by him as aforesaid.

The said Louis Barthelemy Macarty has mortgaged in the same manner the lot number sixteen of the said plan, having thirty-one feet front on the depth specified on said plan; and this to secure the sum of three hundred and ten dollars, amount of the notes drawn by him as aforesaid.

The said Christophe Toledano has mortgaged as aforesaid the lot number eighteen of the said plan, the said lot having twenty-two feet nine inches front on the depth specified on said plan; and this to secure the payment of two hundred and twenty-seven dollars and fifty cents, amount of the notes drawn by him as aforesaid.

The said Vincent Rillieux has mortgaged likewise the lot number ten of the said plan, having fifty-four feet seven inches front on the depth specified on said plan, to secure the payment of five hundred and forty-five dollars eighty-three cents and one-third, of notes drawn by him as aforesaid.

The said Toussaint Mossy has mortgaged in the same manner the lot number nine of the said plan, measuring twenty-seven feet three inches front on the depth specified on said plan, to secure the payment of the two hundred and seventy-two dollars and fifty cents of notes drawn by him as aforesaid.

The said Elie Victor Jourdain has mortgaged in the same manner the lot number fourteen of the said plan, measuring thirty-six feet three inches on the specified depth on the plan, to secure the payment of three hundred and sixty-two dollars and fifty cents of notes drawn by him as aforesaid.

The said McCall & Linton, in the name of their partnership of Winter & McCall and of Wilkins & Linton, have mortgaged the lot number six of the said plan, measuring fifty-four feet seven inches front on a depth specified on the said plan, to secure the payment of the five hundred and forty-five dollars eighty-three cents and one-third of notes drawn by them as aforesaid.

The said Etienne Mazureau, as agent and attorney in fact of the said Alexander Labranche, has mortgaged, in the same manner, the lot num-

ber five of the said plan, measuring fifty-four feet seven inches front on the depth specified on the said plan, to secure the payment of the five hundred and forty-five dollars eighty-three cents and one-third of notes drawn by the said Alexander Labranche as aforesaid.

The said James Pitot, in his official capacities, has mortgaged, in the same manner, the lots number two, four, six, eight, eleven, thirteen, fifteen, seventeen, nineteen, and three-fourths of the lot number twenty-three of said plan, measuring together eight hundred and forty-five feet nine inches on the depth specified on said plan, to secure the payment of nine thousand six hundred and ninety-seven dollars fifty cents of notes drawn by him in his said capacities as above stated.

And the said Barthelemi Lafon, in his official capacities, has mortgaged in the same manner, the one-fourth of the lots number twenty-four and twenty-five of the said plan, owned in common by the heirs of Delabigarre and Livingston, the said portions of lots having together ninety-four feet front on the depth specified on the aforesaid plan, and this to secure the payment of nine hundred and forty dollars subscribed by the said Lafon in his aforesaid capacity.

And for the inscription of the present mortgages, and for the registry of the donation contained in the present act, all necessary powers are given to the bearer of a duly authenticated copy thereof.

Done and passed in my office on the day, month, and year above mentioned, in presence of Messrs. Jean Baptiste Desdunes, jr., and Jean Bte. Donatien Augustin, witnesses, by me requested so to be, and residing in this city, who, together with the said appearers and me, notary, have signed these presents, the whole after due reading thereof.

Original signed:

EDW. LIVINGSTON,
E. MAZUREAU,
For Jean Gravier.
A'DRE LABRANCHE.
T. MOSSY.
TOLEDANO.
L. B. MACARTY.
LAFON,
Testamentary Executor of Pierre Delabigarre.
MANETTE ST. AMAND.
J. ROFFIGNAC, *Mayor.*
VINCENT RILLIEUX.
J. PITOT,
Agent and Attorney in fact of the Heirs of Gravier.
WINTER & McCALL.
WILKINS & LINTON.
E. V. JOURDAIN.
J. B. DESDUNES (son.)
J. B. D. AUGUSTIN.
H. LAVERGNE, *Not. Pub.*

STATE OF LOUISIANA,
Parish of Orleans:

I, Andrew Hero, jr., a notary public, and the custodian of notarial records, in and for the parish and city of New Orleans, duly commissioned and qualified, do certify the foregoing as being a true copy of the original act extant in the records of Hughes Lavergne, formally a notary public in this city, and whose records I hold as custodian thereof.

As attest my hands and seal at New Orleans, as custodian aforesaid, this thirteenth day of October, A. D. eighteen hundred and seventy.

(Signed) ANDREW HERO, JR.,
Custodian of Notarial Records.

21 I certify that the foregoing is a true and correct translation of the document marked A E, filed January 10, 1871, in the eighth district court for the parish of Orleans, in the matter of the New Orleans, Mobile and Chattanooga Railroad Company vs. The City of New Orleans, No. 19 of the docket of said court.

(Signed) A. L. VILLERE.

New Orleans, February 27, 1871.

Document A B.—Filed November 16, 1871.

* * * * * * *

ART. 2. From and after said 31st of August next, the levee dues on said steam vessels navigating on the river, and which shall moor or land in any part of the incorporated limits of the port, shall be fixed as follows:

On each steamer under 75 tons						$12 00
On each steamer of 75 tons and under					100	15 00
"	"	100	"	"	150	22 00
"	"	150	"	"	200	30 00
"	"	200	"	"	250	37 00
"	"	250	"	"	300	45 00
"	"	300	"	"	350	52 00
"	"	350	"	"	400	60 00
"	"	400	"	"	450	67 00
"	"	450	"	"	500	75 00
"	"	500	"	"	550	82 00
"	"	550	"	"	600	90 00
"	"	600	"	"	650	97 00
"	"	650	"	"	700	105 00
"	"	700 and over				120 00

* * * * *

I hereby certify that the above extract is a true copy from an ordinance, approved May 26th, 1843. (See ordinances of municipality No. two, 1848.)

J. B. PRAGUE,
Clerk, Office City Attorney.

Document A C.—Filed November 16, 1871.

No. 640. An ordinance to regulate the levee dues and wharfage on ships and vessels arriving from sea, and on steamboats, flatboats, etc., arriving at the port of New Orleans.

Art. 1. Be it ordained by the common council of the city of New Orleans that, from and after the 1st day of January, 1853, the levee or wharfage dues on ships and other decked vessels and steamships arriving from sea, shall be fixed as follows:

22 . On all vessels of one thousand tons and under, twenty cents per ton, and excess of tonnage over one thousand tons, fifteen cents per ton.

On all steamships navigating the Gulf of Mexico or the ocean, fifteen cents per ton.

Art. 2d. Be it further ordained that, from and after the 1st January, 1853, the levee dues on all steamboats which shall moor or land in any part of the port of New Orleans, shall be fixed as follows:

Ten cents per ton if in port not over five days, and five dollars per day after said five days shall have expired; provided, that boats arriving and departing more than once in each week shall pay only seven cents per ton each trip, and boats arriving and departing more than twice each week shall pay only five cents per ton.

Art. 3d. Be it further ordained that, from and after the 1st January, 1853, the levee dues on flat-boats, barges, etc., fully or in part laden with produce, materials, or merchandise of any kind, shall be fixed as follows:

Flat-boats not measuring more than 80 feet, eight dollars	$8 00
80 to 100 feet, ten dollars	10 00
100 feet and over, thirteen dollars	13 00
On each barge measuring less than 70 feet and not over 20 tons, eight dollars	$8 00
On each steamboat's hull used as a barge, twenty-five dollars	25 00
On each scow or coasting pirogue, two dollars	2 00

Art. 4. Be it further ordained that, so much of all existing ordinances as are inconsistent with the provisions of this ordinance, be, and are hereby, repealed.

(Signed) W'M C. C. CLAIBORNE,
President Board Aldermen.

(Signed) FRANCIS ALPUENTE,
President Board Ass't Aldermen.

Approved 11th February, 1853.

(Signed) A. D. CROSSMAN,
Mayor.

MAYORALTY OF NEW ORLEANS, *October* 23, 1871.

A true copy from the records on file in the mayor's office.

H. CONQUEST CLARKE,
Secretary.

DOCUMENT A D.

$84 00.] Wharves and levees. [No. 3357.

City of New Orleans, district No. one:

Received from R. E. Lee, eighty-four dollars, amount of levee dues on measuring 840 tons, at 10 per ton, from January 31, 1871, to February 4, 1871.

New Orleans, January 31, 1871.

CHA'S H. WALDO *Collector.*
GEO. WOOD,
Ass't D'y Administrator of Public Accounts

23 [Extract from Annual Budget, 1871.]

TABLE F.—FILED NOVEMBER 16, 1871.

Revenue from the wharves of the four districts, and expenditures on same, from April 12, 1852, to April 4, 1870.

Year.	Date.	Collected by city.	Collected by contract.	Total revenue.	Total expenditures.
1852	April 12 to December 31	$191,341 19		$191,341 19	$159,268 13
1853	January 1 to December 31	274,232 22		274,232 22	265,387 58
1854	January 1 to December 31	279,654 35		279,654 35	260,130 05
1855	Nine months' city, three months' contract.	220,286 88	44,841 67	265,128 55	95,248 60
1856	Twelve months' contract	1,493 50	179,366 67	180,860 17	2,285 54
1857	Twelve months' contract	179 75	195,366 67	179,546 42	2,751 90
1858	Nine months' contract		134,255 00		6,165 50
1858	Three months' contract		55,370 00	189,895 00	
1859	Twelve months' contract		221,472 00	221,472 00	128,687 63
1860	Twelve months' contract		221,472 00	221,472 00	35,461 21
1861	Twelve months' contract	200 00	221,472 00	221,672 00	2,193 71
1862	Twelve months' contract	4,819 96	221,472 00	226,291 96	17,829 16
1863	Six months' contract	74,891 97	110,736 00	185,627 97	157,372 06
1864	January 1 to December 31	106,124 19		106,124 19	141,935 66
1865	January 1 to December 31	130,838 84		130,838 84	194,199 05
1866	January 1 to December 31	195,007 72		195,007 72	667,991 61
1867	January 1 to December 31	203,472 25		203,472 25	392,425 18
1868	January 1 to December 31	227,698 65		227,698 65	320,741 65
1869	January 1 to December 31	191,456 18		191,456 18	51,876 68
1870	January 1 to April 4	82,290 87		82,290 87	15,230 84
	Amount of certificates issued and entered on floating debt and seven-thirty certificates, repairs for 1869, estimated.				100,000 00
	Amount on pay-roll of city officers for four collectors, from April 12, 1852, until October, 1855—four and a half years, estimated.				21,600 00
	Amount on pay-roll of city officers for two collectors, from January, 1863, to March 1866—three and a quarter years, estimated.				11,700 00
	Amount paid collectors from March 30, 1866, to June 30, 1867.				9,187 37
	Amount paid collectors from July 1, 1867, to April 4, 1870.				29,069 75
	Notes returned to the lessees of wharves by compromise with the finance committee in 1862.				435,390 94
	Amount of warrants paid, arising out of above compromise, to the following parties:				
	Stanley & Eager.....$58,000.98				
	E. A. Patterson & Co. .19,953.90				
	Mrs. S. H. Peck (risk,) ..3,990.78				81,944 96
	Total	$2,183,988 52	$1,590,094 01	$3,774,082 53	$3,576,074,66
	Net revenues from wharves for eighteen years, exclusive of wharfingers.				198,007 87

NOTE.—Ordinance No. 2364, published August 16, 1855. Sale of revenues for three years, for $538,100 Ordinance No. 4007, approved June 21, 1858. Sale of revenues for four years and nine months, $1,052,000 Under the last ordinance, a compromise was made with the lessees.—See statement.

24 DOCUMENT L[1].—FILED NOVEMBER 16, 1871.

Contract of city of New Orleans with James A. Lusk.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Paul Emile Theard, notary public in and for the parish and city of New Orleans, duly commissioned

and sworn, and in presence of the undersigned witnesses, personally came and appeared the honorable John Lawson Lewis, mayor of the city of New Orleans, herein acting in his said capacity, and Mr. James Anderson Lusk, also of said city. And the said John L. Lewis, acting as aforesaid, declared that by virtue of the authority in him vested by resolution No. 2364, passed by the common council of the city of New Orleans, and in force by operation of law since the sixteenth August last, (1855;) and also by virtue of resolution No. 2373, passed by the common council, and approved on the twenty-sixth September, 1855 copies of which resolutions are hereto annexed for reference; and in confirmation of the sale and adjudication made by the city comptroller, on the seventeenth September, 1855, as it will a'pear by reference to the proces verbal hereto annexed, he does by these presents grant, bargain, sell, and confirm unto the said James A. Lusk, the revenues of all the wharves and landings of this city, lying and being upon the Mississippi River, and contained within the lower line of North Market street, and the upper line of that part of the river-front of said city which is appropriated to the Canal street ferry, collectable under existing ordinances upon all ships, vessels, steamships, steamboats, flat-boats, and water-crafts of any and every description whatsoever, for the term of three years, commencing on the first day of October, eighteen hundred and fifty-five, and ending with the thirtieth day of September, eighteen hundred and fifty-eight.

And for the purpose contemplated, the said John L. Lewis, in his said capacity, does hereby subrogate the said James A. Lusk to all the rights and privileges of the city of New Orleans, to sue for and collect said revenues.

And the said contracting parties do hereby mutually agree, stipulate, and covenant:

That the said James A. Lusk shall not sell, transfer, assign, set over, or sublease his right, title, or interest in the revenues of said section, to any person or persons whatsoever, and that in case of any sale, transfer, assignment, or sublease made by any person or persons of the rights or interests acquired under this contract, such sale, transfer, assignment, or sublease shall work a forfeiture of said rights and interests so acquired as aforesaid, and the same shall revert to the city of New Orleans.

That the city of New Orleans reserves to itself, and excepts from said sale, each and every landing and ferry-wharf now existing, and each and every nuisance-wharf now existing, and all revenues arising from the same.

That said wharves, landings, and levees shall be accepted by the said James A. Lusk in the condition in which the same may be on said first day of October, eighteen hundred and fifty-five; and that said James A. Lusk, so accepting and taking possession of said wharves, landings, and levees, shall repair the same and keep the same in good order and condition during the whole term of three years, commencing with the said first day of October, 1855, and ending with the thirtieth day of September, 1858, provided that the said James A. Lusk shall have no right to build any sheds, warehouses, or platforms on said levee without the permission of the common council.

That the levees named in the foregoing paragraphs shall extend back to the line of street or streets fronting the river; that is to say, the levee comprised within the section hereby adjudicated shall extend back to the line of Front street, from North Market to Canal street.

That all the repairs required to be made under this contract to the levees, landings, and wharves shall be made by the said James A. Lusk,

strictly in accordance with the terms, conditions, and stipulations of sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, and twenty of the ordinance of the common council No. 2364, entitled "An ordinance concerning the wharves of the city of New Orleans, and providing for farming the revenues thereof," which ordinance is admitted as a part of this act, and in order to identify it herewith, a copy of the same is hereto annexed, and signed ne varietur by the parties, witnesses, and the undersigned notary.

That all works and repairs required to be done by this contract or the aforesaid ordinance, shall be done under the supervision of the surveyor and the committee of streets and landings of the two boards of the common council; and in case of refusal on the part of said James A. Lusk to make said repairs, it shall be the duty of the surveyor to have them made forthwith, at the expense of the said James A. Lusk.

That all works and repairs required to be done by this contract or aforesaid ordinance, shall be done by the parties bound to do the same, without any delay, after notice thereof is given by the surveyor, with the approval of the committee on streets and landings of the common council.

That the common council may revoke, set aside, and annul the sale, made under and by virtue of this contract or aforesaid ordinance, of revenues collectable in the aforesaid section, whenever the said James A. Lusk shall neglect or fail to make, within a reasonable time, the works and repairs required to be done by this contract or ordinance, or may have the required work or repairs done at the expense of the said James A. Lusk, or may resell the said section for account and risk of said defaulting James A. Lusk.

That the common council may revoke, set aside, and annul the sale, made under or by virtue of this contract or aforesaid ordinance, of revenues collectable in the said section, whenever the said James A. Lusk shall neglect or fail to pay at maturity any note given in part payment of the purchase-price of said revenues collectable as aforesaid, and thereupon the city may take immediate possession of the wharf or wharves, landings, and levees within said section, and proceed to collect the revenues collectable within the same.

The said James A. Lusk shall, in the shortest possible delay, be furnished by authentic act by the surveyor, before the undersigned notary, with an inventory of all spars, timbers, stage-planks, etc., used for mooring vessels and for staging for vessels, and shall give the surveyor a receipt for the same, and shall at all times keep on hand, for the use of vessels, a sufficient supply of the same, and shall return to the city of New Orleans, at the end of this lease, an inventory of equal amount and value of the same.

That said James A. Lusk shall be responsible for all damages which may be claimed of the city, by any party or parties who may sustain injury in consequence of the neglect of the aforesaid James A. Lusk to comply with the requirements of this contract.

26 That the said James A. Lusk shall not order off or remove from any wharf or wharves within either of the districts, any articles of freight or merchandise landed upon the same, from any steamboat, until twenty-four hours after said steamboat shall have fully discharged her cargo.

That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations governing the same, and under existing ordinances, and no change shall be made without the consent of both parties; that all ships and other water-crafts shall pay the dues collectable under existing ordinances, to the lessee or lessees of the revenues of the

district in which they fall due, and that in case of removal of any ship or water-craft from one district to another, the dues so collectable shall be divided pro rata between the lessees of the revenues of the district in which the ship or vessel may lie, according to the number of days said ship or vessel shall lie and be within the several districts.

This privilege is granted to the said James A. Lusk, for and in consideration of the price and sum of one hundred and twenty-three thousand dollars, in payment of which the said James A. Lusk has furnished thirty-six notes, dated this day, drawn by him to the order of and endorsed by Messrs. Daniel S. Graham and Josiah Cole, and payable at the Louisiana State Bank, to wit:

Three notes of two thousand two hundred and seventy-seven dollars and seventy-seven cents each, payable respectively on the fifteenth of October, first of November, and first of December next, (1855.)

Six notes for four thousand five hundred and fifty-five dollars and fifty-five cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-six.

Six notes of two thousand two hundred and seventy-seven dollars and seventy-seven cents each, payable respectively on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-six.

Six notes of four thousand five hundred and fifty-five dollars and fifty-five cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-seven.

Six notes of two thousand two hundred and seventy-seven dollars and seventy-seven cents each, payable respectively on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-seven.

Six notes of four thousand five hundred and fifty-five dollars and fifty-five cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-eight.

Two notes of two thousand two hundred and seventy-seven dollars and seventy-seven cents each, payable respectively on the first day of each of the months of July and August, eighteen hundred and fifty-eight.

And one note of two thousand two hundred and seventy-eight dollars and one cent, payable on the first day of September, eighteen hundred and fifty-eight; said notes being signed ne varietur by the undersigned notary, to identify them herewith, were delivered to the said John L. Lewis, mayor, who hereby acknowledges the receipt thereof.

And now personally intervened in these presents, Messrs. Josiah Cole and Samuel Smith, both of this city, who having read what is above written, declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by the said
27 James A. Lusk, and bind themselves jointly and in solido in favor of the said city, in the sum of thirty thousand seven hundred and fifty dollars, payable on demand to said corporation.

Now, the condition of the above-written bond or obligation is such, that if the said James A. Lusk shall well, truly, and faithfully perform, and execute the present contract in accordance with the above terms conditions, and stipulations, then the above-written bond or obligation to be null and void; but otherwise, to be and remain in full force and

virtue. The said Josiah Cole and Sam'l Smith hereby waive the benefit of division and discussion granted by law to sureties.

Done and passed at New Orleans, in my office, in presence of Lucien Pilié and William Théard, competent witnesses, who have hereunto signed their names with the said parties, and me, notary, after due reading of the foregoing, on this twenty-ninth day of September, eighteen hundred and fifty-five.

(Original signed)

JOHN L. LEWIS, *Mayor*,
JAMES A. LUSK.
JOSIAH COLE.
SAMUEL SMITH.
L. PILIE.
WM. THEARD.

Approved.

C. ROSELIUS,
For JOHN LIVINGSTON, *City Attorney.*
WM. THEARD.
PAUL E. THEARD, *N. P.*

SEPTEMBER 29, 1855.

STATE OF LOUISIANA,
Parish of Orleans:

I, Andrew Hero, jr., a notary public, and the custodian of notarial records in and for this parish and city of New Orleans, duly commissioned and qualified, do certify the above and foregoing as a true and correct copy of the original act extant in the notarial records of Paul E. Théard, formerly a notary in this city, and whose notarial records I hold as custodian thereof.

Attest my hand and seal of custodian aforesaid, at New Orleans, this 28th of October, A. D. 1871.

ANDREW HERO,
Custodian of Notarial Records.

28 DOCUMENT L².—FILED NOVEMBER 16TH, 1871.

Contract of City of New Orleans with Chas. Odier & Co.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Paul Emile Theard, notary public for the parish and city of New Orleans, State of Louisiana, duly commissioned and sworn, and in the presence of the undersigned witnesses, personally came and appeared the honorable John Lawson Lewis, mayor of the city of New Orleans, herein acting in his said capacity; and Mr. Christian Honold, one of the firm of Charles Odier & Co., of this city, and herein acting for and on behalf of said firm. And the said John L. Lewis, acting as aforesaid, declared that by virtue of the authority in him vested by resolution No. 2364, passed by the common council of the city of New Orleans, and in force by operation of law since the sixteenth August last, (1855;) and also, by virtue of resolution No. 2374, passed by the common council, and approved on the twenty-sixth September, eighteen hundred and fifty-five, copies of which resolutions are hereto annexed for reference; and in confirmation of the sale and adjudication

made by the city comptroller on the seventeenth of September, eighteen hundred and fifty-five, as it will appear by reference to the process verbal hereto annexed, he does by these presents grant, bargain, sell, and confirm unto the said Charles Odier & Co. the revenues of all the wharves and landings of this city, lying and being upon the Mississippi River, and contained within the lower line of that portion of the river-front of said city which is appropriated to the Esplanade Street ferry and the lower or northern limit of said city, collectable under existing ordinances upon all ships, vessels, steamships, steamboats, flat-boats, and water-crafts of any and every description whatsoever, for the term of three years, commencing on the first day of October, eighteen hundred and fifty-five, and ending with the thirtieth day of September, eighteen hundred and fifty-eight. And for the purpose contemplated, the said John L. Lewis, in his said capacity, does hereby subrogate the said Chas. Odier & Co., to all rights and privileges of the city of New Orleans, to sue for and collect said revenues.

And the contracting parties do hereby mutually agree, stipulate, and covenant:

That the said Chas. Odier & Co. shall not sell, transfer, assign, set over, or sublease their right, title, and interest in the revenues of said section, to any person or persons whatsoever; and that in case of any sale, transfer, assignment, or sublease made by any person or persons of the rights and interests acquired under this contract, such sale, transfer, assignment, or sublease shall work a forfeiture of said rights and interests so acquired as aforesaid; and the same shall revert to the city of New Orleans.

That the city of New Orleans reserves to itself, and excepts from said sale, each and every landing and ferry-wharf now existing, and each and every nuisance-wharf now existing, and all revenues arising from the same.

That said wharves, landings, and levees shall be accepted by the said Chas. Odier & Co., in the condition in which the same may be on said first day of October, eighteen hundred and fifty-five; and that
29 Chas Odier & Co., so accepting and taking possession of said wharves, landings, and levees, shall repair the same, and keep the same in good order and condition during the whole term of three years, commencing with the said first day of Oct., eighteen hundred and fifty-five, and ending with the thirtieth day of September, eighteen hundred and fifty-eight; provided that the lessees shall have no right to build any shed, warehouses or platforms on said levee without the permission of the common council.

That the levees named in the foregoing paragraph shall extend back to the line of the street or streets fronting the river—that is to say, the levee comprised within the section hereby adjudicated shall extend back to the line of New Levee street or public road.

That all repairs required to be made under this contract, to the levee, landings, and wharves, shall be made by the said Chas. Odier & Co., strictly in accordance with the terms, conditions, and stipulations of sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, and twenty of the ordinance of the common council No. 2364, entitled "An ordinance concerning the wharves of the city of New Orleans, and providing for farming the revenues thereof," which ordinance is admitted as a part of this contract; and in order to identify it herewith, a copy of the same is hereunto annexed and signed ne varietur by the parties, witnesses, and the undersigned notary.

That all works and repairs required to be done by this contract, or the

aforesaid ordinance, shall be done under the supervision of the surveyor and of the committee on streets and landings of the two boards of the common council. And in case of refusal on the part of said Chas. Odier & Co. to make said repairs, it shall be the duty of the surveyor to have them made forthwith, at the expense of said Chas. Odier & Co.

That all works and repairs required to be done by this contract or the aforesaid ordinance shall be done by the parties bound to do the same without any delay, after notice thereof is given by the surveyor, with the approval of the committee of streets and landings of the common council.

That the common council may revoke, set aside, and annul the sale made under and by virtue of this contract or aforesaid ordinance, of revenues collectable in the aforesaid section, whenever the said Chas. Odier & Co. shall neglect or fail to make, within a reasonable time, the works and repairs required to be done by this contract or said ordinance; or may have the required work or repairs done at the expense of said Chas. Odier & Co.; or may re-sell the said section for account and risk of said defaulting Chas. Odier & Co.

That the common council may revoke, set aside, and annul the sale made under or by virtue of this contract or aforesaid ordinance, of revenues collectable in the said section, whenever said Chas. Odier & Co. shall neglect or fail to pay, at maturity, any note given in part payment of the purchase-price of said revenues, collectable as aforesaid; and thereupon the city may take immediate possession of the wharf or wharves, landings, and levees within said section, and proceed to collect the revenues collectable within the same.

That the said Chas. Odier & Co. shall, in the shortest possible delay, be furnished by authentic act by the surveyor, before the undersigned notary, with an inventory of spars, timbers, stage-planks, etc., used for mooring vessels and for stagings for vessels, and shall give to the surveyor a receipt for the same, and shall at all times keep on hand for the use of vessels a sufficient supply of the same; and shall return to the city of New Orleans, at the end of their lease, an inventory of equal amount and value of the same.

That the said Chas. Odier & Co. shall be responsible for all damages which may be claimed of the city by any party or parties who may sustain injury in consequence of the neglect of the said Chas. Odier & Co. to comply with the requirements of this contract.

That the said Chas. Odier & Co. shall not order off or remove from any wharf or wharves within any of the districts, any articles of freight or merchandise landed upon the same, from any steamboat, until twenty-four hours after said steamboat shall have fully discharged her cargo.

That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations governing the same and under existing ordinances; and no charge shall be made without the consent of both parties. That all ships and other water-crafts shall pay the dues collectable under existing ordinances, to the lessee or lessees of the revenue of the district in which they fall due; and that in case of removal of any ship or water-craft from one district to another, the dues so collectable shall be divided pro rata between the lessees of the revenues of the districts in which the ship or vessel may lie, according to the number of days said ship or vessel shall lie and be within the several districts.

This privilege is granted to the said Chas. Odier & Co. for and in consideration of the price and sum of seventy-eight thousand dollars, in payment of which said Chas. Odier & Co. have furnished thirty-six promissory notes, dated this day, signed by the said firm, to the order of

Louis Surgi, and by him endorsed, and payable at the Louisiana State Bank, to wit:

Three notes of fourteen hundred and forty-four dollars and forty-four cents each, payable respectively on the fifteenth October, first November, and first December next, (1855.)

Six notes of two thousand eight hundred and eighty-eight dollars and eighty-eight cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-six.

Six notes of fourteen hundred and forty-four dollars and forty-four cents each, payable respectively on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-six.

Six notes of two thousand eight hundred and eighty-eight dollars and eighty-eight cents, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-seven.

Six notes of fourteen hundred and forty-four dollars and forty-four cents each, payable respectively on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-seven.

Six notes of two thousand eight hundred and eighty-eight dollars and eighty-eight cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-eight.

Two notes of fourteen hundred and forty-four dollars and forty-four cents each, payable respectively on the first day of each of the months of July and August, eighteen hundred and fifty-eight.

And one note of fourteen hundred and forty-four dollars and sixty-eight cents, payable on the first of September, eighteen hundred and fifty-eight.

Which said notes being signed ne varietur by the undersigned notary, in order to identify them herewith, were delivered to the said John L. Lewis, mayor, who hereby acknowledges the delivery thereof.

31 And now personally came and appeared Messrs. John Pemberton and Henry Vose Baxter, both of this city, who, having read what is above written, declared that they hereby guarantee the city of New Orleans the faithful performance of the foregoing contract by the said Chas. Odier & Co., and bind themselves jointly and in solido, in favor of said city, in the sum of nineteen thousand five hundred dollars, payable on demand to said corporation. Now the condition of the above-written bond or obligation is such, that if the said Ch's Odier & Co. shall well, truly, and faithfully perform and execute the present contract in accordance with the above terms, conditions, and stipulations, then the above-written bond or obligation to be null and void; but otherwise to be and remain in full force and virtue. The said Pemberton and Baxter hereby waive the benefit of division and discussion granted by law to sureties.

Done and passed in my office, in the city of New Orleans, in presence of Lucien Pilie and William Theard, competent witnesses, on this twenty-ninth day of September, eighteen hundred and fifty-five; and

the said parties and witnesses have hereunto signed their names, together with me, notary, after due reading of the foregoing.

(Original signed) JOHN L. LEWIS, *Mayor.*
CHARLES ODIER & CO.
H. W. BAXTER.
JOHN PEMBERTON.

Approved:

C. ROSELIUS,
For JOHN LIVINGSTON,
City Att'y.

L. PILIE.
WM THEARD.
PAUL E. THEARD.
Not. Pub.

SEPTEMBER 29, 1855.

STATE OF LOUISIANA,
Parish of Orleans:

I, Andrew Hero, jr., a notary public, and the custodian of notarial records, in and for this parish and the city of New Orleans, duly commissioned and qualified, do certify the above and foregoing as a true and correct copy of the original act extant in the notarial records of Paul E. Theard, formerly a notary public in this city, and whose notarial records I hold as custodian thereof.

As attest my hand and seal of custodian aforesaid, at New Orleans, this 31st day of October, A. D. 1871.

ANDREW HERO, JR.,
Custodian of Notarial Records.

32 DOCUMENT L 3.—FILED NOVEMBER 16TH, 1871.

Contract of city of New Orleans with Chas. Odier & Co.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Paul Emile Theard, notary public for the parish and city of New Orleans, State of Louisiana, duly commissioned and sworn, and in the presence of the undersigned witnesses, personally came and appeared the honorable John Lawson Lewis, mayor of the city of New Orleans, herein acting in his said capacity; and Mr. Christian Honold, one of the firm of Charles Odier & Co., of this city, and herein acting for and on behalf of said firm; and the said John L. Lewis, acting as aforesaid, declared that by virtue of the authority in him vested by resolution No. 2364, passed by the common council of the city of New Orleans, and in force by operation of law since the sixteenth August last, (1855,) and also by virtue of resolution No. 2374, passed by the common council and approved on the twenty-sixth September, eighteen hundred and fifty-five, copies of which resolutions are hereto annexed for reference; and in confirmation of the sale and adjudication made by the city comptroller on the seventeenth of September, eighteen hundred and fifty-five, as it will appear by reference to the process verbal hereto annexed, he does by these presents grant, bargain, sell, and confirm unto the said Charles

Odier & Co. the revenues of all the wharves and landings of this city, lying and being upon the Mississippi River, and contained within the lower side of Toulouse street and the upper line of that portion of the river-front of said city which is appropriated to the Esplanade street ferry, and excepting therefrom that portion of the river-front which is or may hereafter be appropriated for a ferry, to an extent of not more than one hundred and fifty feet, at the foot of St. Ann street, collectable under existing ordinances upon all ships, vessels, steamships, steamboats, flat-boats, and water-crafts of any and every description whatsoever, for the term of three years, commencing on the first day of October, eighteen hundred and fifty-five, and ending with the thirtieth day of September, eighteen hundred and fifty-eight; and for the purpose contemplated, the said John L. Lewis, in his said capacity, does hereby subrogate the said Chas. Odier & Co. to all the rights and privileges of the city of New Orleans, to sue for and collect said revenues.

And the contracting parties do hereby mutually agree, stipulate, and covenant:

That the said Chas. Odier & Co. shall not sell, transfer, assign, set over, or sublease their right, title, and interest in the revenues of said section, to any person or persons whatsoever; and that, in case of any sale, transfer, assignment, or sublease made by any person or persons, of the rights and interests acquired under this contract, such sale, transfer, assignment, or sublease shall work a forfeiture of said rights and interests so acquired as aforesaid; and the same shall revert to the city of New Orleans.

That the city of New Orleans reserves to itself, and excepts from said sale, each and every landing and ferry-wharf now existing, and each and every nuisance-wharf now existing, and all revenues arising from the same.

33 That said wharves, landings, and levees shall be accepted by the said Cha's Odier & Co. in the condition in which the same may be on said first day of October, eighteen hundred and fifty-five; and that Cha's Odier & Co., so accepting and taking possession of said wharves, landings, and levees, shall repair the same and keep the same in good order and condition during the whole term of three years, commencing with the said first day of Oct., eighteen hundred and fifty-five, and ending with the thirtieth day of September, eighteen hundred and fifty-eight; provided, that the lessees shall have no right to build any shed, warehouses, or platforms on said levee without the permission of the common council.

That the levees named in the foregoing paragraph shall extend back to the line of the street or streets fronting the river; that is to say, the levee comprised within the section hereby adjudicated shall extend back to the line of Old Levee street.

That all repairs required to be made under this contract to the levee, landings, and wharves shall be made by the said Cha's Odier & Co. strictly in accordance with the terms, conditions, and stipulations of sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, and twenty of the ordinance of the common council No. 2364, entitled "An ordinance concerning the wharves of the city of New Orleans and providing for farming the revenues thereof," which ordinance is admitted as a part of this contract; and in order to identify it herewith, a copy of the same is hereunto annexed and signed ne varietur by the parties, witnesses, and the undersigned notary.

That all works and repairs required to be done by this contract or the aforesaid ordinance shall be done under the supervision of the surveyor

and of the committee on streets and landings of the two boards of the common council. And in case of refusal on the part of said Cha's Odier & Co. to make said repairs, it shall be the duty of the surveyor to have them made forthwith, at the expense of said Cha's Odier & Co.

That all works and repairs required to be done by this contract or the aforesaid ordinance shall be done by the parties bound to do the same, without any delay, after notice thereof is given by the surveyor, with the approval of the committee of streets and landings of the common council.

That the common council may revoke, set aside, and annul the sale, made under and by virtue of this contract or aforesaid ordinance, of revenues collectable in the aforesaid section whenever the said Cha's Odier & Co. shall neglect or fail to make, within a reasonable time, the works and repairs required to be done by this contract or said ordinance, or may have the required work or repairs done at the expense of said Cha's Odier & Co., or may resell the said section for account and risk of said defaulting Cha's Odier & Co.

That the common council may revoke, set aside, and annul the sale, made under or by virtue of this contract or aforesaid ordinance, of revenues collectable in the said section whenever said Cha's Odier & Co. shall neglect or fail to pay, at maturity, any note given in part payment of the purchase-price of said revenues, collectable as aforesaid; and thereupon the city may take immediate possession of the wharf or wharves, landings and levees, within said section, and proceed to collect the revenues collectable within the same.

That the said Cha's Odier & Co. shall, in the shortest possible delay, be furnished by authentic act by the surveyor, before the undersigned notary, with an inventory of spars, timbers, stage-planks, etc., used for mooring vessels and for stagings for vessels, and shall give to the surveyor a receipt for the same, and shall at all times keep on hand
34 for the use of vessels a sufficient supply of the same; and shall return to the city of New Orleans, at the end of their lease, an inventory of equal amount and value of the same.

That the said Cha's Odier & Co. shall be responsible for all damages which may be claimed of the city by any party or parties who may sustain injury in consequence of the neglect of the aforesaid Cha's Odier & Co. to comply with the requirements of this contract.

That the said Cha's Odier & Co. shall not order off or remove from any wharf or wharves, within any of the districts, any articles of freight or merchandise landed upon the same from any steamboat until twenty-four hours after said steamboat shall have fully discharged her cargo.

That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations governing the same, and under existing ordinances, and no change shall be made without the consent of both parties; that all ships and other water-crafts shall pay the dues collectable under existing city ordinances to the lessee or lessees of the revenue of the district in which they fall due; and that in case of removal of any ship or water-craft from one district to another, the dues so collectable shall be divided pro rata between the lessees of the revenues of the districts in which the ship or vessel may lie, according to the number of days said ship or vessel shall lie and be within the several districts.

This privilege is granted to the said Cha's Odier & Co. for and in consideration of the price and sum of sixty thousand dollars, in payment of which said Cha's Odier & Co. have furnished thirty-six promissory notes, dated this day, signed by the said firm, to the order of Louis Surgi, and by him endorsed, and payable at the Louisiana State Bank, to wit:

Three notes of eleven hundred and eleven dollars and eleven cents each, payable respectively on the fifteenth October, first November, and first December next, (1855.)

Six notes of two thousand two hundred and twenty-two dollars and twenty-two cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-six.

Six notes of eleven hundred and eleven dollars and eleven cents each, payable respectively on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-six.

Six notes of two thousand two hundred and twenty-two dollars and twenty-two cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-seven.

Six notes of eleven hundred and eleven dollars and eleven cents each, payable respectively on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-seven.

Six notes of two thousand two hundred and twenty-two dollars and twenty-two cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-eight.

Two notes of eleven hundred and eleven dollars each, payable respectively on the first day of each of the months of July and August, eighteen hundred and fifty-eight.

And one note of eleven hundred and eleven dollars and seventeen cents, payable on the first of September, eighteen hundred and fifty-eight.

35 Which said notes, being signed ne varietur by the undersigned notary in order to identify them herewith, were delivered to the said John L. Lewis, mayor, who hereby acknowledges the delivery thereof.

And now personally came and appeared Messrs. John Pemberton and Henry Vose Baxter, both of this city, who, having read what is above written, declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by the said Cha's Odier & Co., and bind themselves jointly and in solido, in favor of said city, in the sum of fifteen thousand dollars, payable on demand to said corporation. Now, the condition of the above-written bond or obligation is such, that if the said Ch's Odier & Co. shall well, truly, and faithfully perform and execute the present contract in accordance with the above terms, conditions, and stipulations, then the above-written bond or obligation to be null and void; but otherwise to be and remain in full force and virtue. The said Pemberton and Baxter hereby waive the right of division and discussion granted by law to sureties.

Done and passed in my office in the city of New Orleans, in presence of Lucien Pilie and W'm Theard, competent witnesses, on this twenty-ninth day of September, eighteen hundred and fifty-five; and the said

parties and witnesses have hereunto signed their names, together with me, notary, after due reading of the foregoing.

(Original signed)

JOHN L. LEWIS, *Mayor.*
CHARLES ODIER & CO.
H. W. BAXTER.
JOHN PEMBERTON.

Approved.

C. ROSELIUS,
For JOHN LIVINGSTON,
City Att'y.

L. PILIE.
W'M THEARD.
PAUL E. THEARD,
Not. Pub.

SEPTEMBER 29, 1855.

STATE OF LOUISIANA,
Parish of Orleans:

I, Andrew Hero, jr., a notary public and the custodian of notarial records in and for this parish and the city of New Orleans, duly commissioned and qualified, do certify the above and foregoing as a true and correct copy of the original act extant in the notarial records of Paul E. Theard, formerly a notary public in this city, and whose notarial records I hold as custodian thereof.

As attest my hand and seal as custodian aforesaid, at New Orleans, this 28th day of October, A. D. 1871.

ANDREW HERO, JR.,
Custodian of Notarial Records.

36 DOCUMENT L[4]—FILED NOVEMBER 16, 1871.

Contract of City of New Orleans with Cha's Odier & Co.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Paul Emile Theard, notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the honorable John Lawson Lewis, mayor of the city of New Orleans, herein acting in his said capacity, and Mr. Christian Honold, one of the firm of Cha's Odier & Co., of this city, and herein acting for and on behalf of said firm.

And the said John L. Lewis, acting as aforesaid, declared that by virtue of the authority in him vested by resolution No. 2364, passed by the common council of the city of New Orleans and in force by operation of law since the sixteenth August, (1855;) and also by virtue of resolution No. 2374, passed by the common council and approved on the twenty-sixth September, 1855, copies of which resolutions are hereto annexed for reference; and in confirmation of the sale and adjudication made by the city comptroller on the seventeenth September, 1855, as will appear by reference to the proces verbal hereto annexed, he does by these presents grant, bargain, sell, and confirm unto the said Cha's Odier & Co. the revenues of all the wharves and landings of this city, lying and being upon the Mississippi River, and contained within the upper limits of Felicity road and the lower line of North Market street,

collectable under existing ordinances upon all ships, vessels, steamships, steamboats, flat-boats, and water-crafts, of any and every description whatsoever, for the term of three years, commencing on the first day of October, eighteen hundred and fifty-five, and ending with the thirtieth day of September, eighteen hundred and fifty-eight.

And for the purposes contemplated the said John L. Lewis, in his said capacity, does hereby subrogate the said Cha's Odier & Co. to all the rights and privileges of the city of New Orleans, to sue for and collect said revenues.

And the said contracting parties do hereby mutually agree, stipulate, and covenant—

That the said Cha's Odier & Co. shall not sell, transfer, assign, set over, or sublease their right, title, or interest in the revenues of said sections to any person or persons whatsoever, and that in case of any sale, transfer, assignment, or sublease made by any person or persons of the rights or interests required under this contract, such sale, transfer, assignment, or sublease shall work a forfeiture of said rights and interests so acquired as aforesaid, and the same shall revert to the city of New Orleans.

That the city of New Orleans reserves to itself and excepts from said sale each and every landing and ferry-wharf now existing, and each and every nuisance-wharf now existing, and all revenues arising from the same.

That said wharves, landings, and levees shall be accepted by the said Cha's Odier & Co. in the condition in which the same may be on said first day of October, eighteen hundred and fifty-five; and that said Cha's Odier & Co., so accepting and taking possession of said wharves, landing, and levees, shall repair the same and keep the same in good order and condition during the whole term of three years, commencing with the said first day of October, 1855, and ending with the thirtieth day of September, 1858, provided that the said Cha's Odier & Co.
37 shall have no right to build any sheds, warehouses, or platforms on said levee without the permission of the common council.

That the levees named in the foregoing paragraphs shall extend back to the line of street or streets fronting the river; that is to say, the levee comprised within the section hereby adjudicated shall extend back to the line of New Levee street from Felicity road to Race street, and to Front Levee, from Race to North Market street.

That all the repairs required to be made under this contract to the levees, landings, and wharves shall be made by the said Cha's Odier & Co. strictly in accordance with the terms, conditions, and stipulations of sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, and twenty of the ordinance of the common council No. 2364, entitled "An ordinance concerning the wharves of the city of New Orleans, and providing for farming the revenues thereof," which ordinance is admitted as a part of this contract, and in order to identify it herewith a copy of the same is hereto annexed and signed ne varietur by the parties, witnesses, and the undersigned notary.

That all works and repairs required to be done by this contract or the aforesaid ordinance shall be done under the supervision of the surveyor and the committee of streets and landings of the two boards of the common council; and in case of refusal on the part of said Cha's Odier & Co. to make said repairs, it shall be the duty of the surveyor to have them made forthwith, at the expense of the said Cha's Odier & Co.

That all works and repairs required to be done by this contract or aforesaid ordinance shall be done by the parties bound to do the same,

without any delay, after notice thereof is given by the city surveyor, with the approval of the committee on streets and landings of the common council.

That the common council may revoke, set aside, and annul the sale, made under and by virtue of this contract or aforesaid ordinance, of revenues collectable in the aforesaid section, whenever the said Cha's Odier & Co. shall neglect or fail to make, within a reasonable time, the works and repairs required to be done by this contract or said ordinance, or may have the required work or repairs done at the expense of the said Cha's Odier & Co., or may resell the said section for account and risk of said defaulting Cha's Odier & Co.

That the common council may revoke, set aside, and annul the sale, made under or by virtue of this contract or aforesaid ordinance of revenues collectable in the said section, whenever the said Cha's Odier & Co. shall neglect or fail to pay at maturity any note given in part payment of the purchase-price of said revenues collectable as aforesaid, and thereupon the city may take immediate possession of the wharf or wharves, landings and levees, within said section, and proceed to collect the revenues collectable within the same.

That said Cha's Odier & Co. shall, in the shortest possible delay, be furnished by authentic act by the surveyor, before the undersigned notary, with an inventory of all spars, timbers, stage-planks, etc., used for mooring vessels and for staging for vessels, and shall give the surveyor a receipt for the same, and shall at all times keep on hand, for the use of vessels, a sufficient supply of the same, and shall return to the city of New Orleans, at the end of this lease, an inventory of equal amount and value of the same.

That said Cha's Odier & Co. shall be responsible for all damages which may be claimed of the city by any party or parties who may sustain injury in consequence of the neglect of the aforesaid Cha's Odier & Co. to comply with the requirements of this contract.

That the said Chas. Odier & Co. shall not order off or remove
38 from any wharf or wharves, within either of the districts, any articles of freight or merchandise landed upon the same from any steamboat until twenty-four hours after said steamboat shall have fully discharged her cargo;

That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations governing the same and under existing ordinances, and no change shall be made without the consent of both parties; that all ships and other water-crafts shall pay the dues collectable under existing ordinances to the lessee or lessees of the revenues of the district in which they fall due, and that in case of the removal of any ship or water-craft from one district to another, the dues so collectable shall be divided pro rata between the lessees of the revenues of the district in which the ship or vessel may lie, according to the number of days said ship or vessel shall lie and be within the several districts.

This privilege is granted to the said Chas. Odier & Co. for and in consideration of the price and sum of one hundred and fifty-four thousand dollars, in payment of which the said Chas. Odier & Co. have furnished thirty-six promissory notes, signed by the said firm to the order of Louis Surgi, and by him endorsed and payable at the Louisiana State Bank, to wit:

Three notes of two thousand eight hundred and fifty-one dollars and eighty-five cents ($2,851.85) each, payable respectively on the fifteenth of October, first of November, and first of December next, (1855.)

Six notes for five thousand seven hundred and three dollars and seventy cents ($5,703.70) each, payable respectively on the first day of each

of the months of January, February, March, April, May, and June, eighteen hundred and fifty-six.

Six notes of two thousand eight hundred and fifty-one dollars and eighty-five cents each, payable respectively on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-six.

Six notes of five thousand seven hundred and three dollars and seventy cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-seven.

Six notes of two thousand eight hundred and fifty-one dollars and eighty-five cents each, payable respectively on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-seven.

Six notes of five thousand seven hundred and three dollars and seventy cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-eight.

Two notes of two thousand eight hundred and fifty-one dollars and eighty-five cents each, payable respectively on the first day of each of the months of July and August, eighteen hundred and fifty-eight.

And one note of two thousand eight hundred and fifty-one dollars and ninety-five cents, payable on the first day of September, eighteen hundred and fifty-eight; which notes being signed ne varietur by the undersigned notary, to identity them herewith, were delivered to the said John L. Lewis, mayor, who hereby acknowledges the delivery thereof.

And now personally intervened in these presents Mr. John Pemberton and Mr. Henry V. Baxter. both of this city, who having read what is above written, declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by
39 said Chas. Odier & Co., and bind themselves jointly and in solido, in favor of the said city, in the sum of thirty-eight thousand five hundred dollars, payable on demand to said corporation.

Now, the condition of the above-written bond or obligation is such, that if the said Chas. Odier & Co. shall well, truly, and faithfully perform and execute the present contract, in accordance with the above terms, conditions, and stipulations, then the above-written bond or obligation to be null and void; but otherwise to be and remain in full force and virtue. The said Pemberton and Baxter hereby waive the benefit of division and discussion granted by law to sureties.

Done and passed at New Orleans, in my office, in presence of Lucien Pilié and William Théard, competent witnesses, who have hereunto signed their names with the said parties, and me, notary, after due reading of the foregoing, on this twenty-ninth day of September, eighteen hundred and fifty-five.

(Original signed)

JOHN L. LEWIS, *Mayor.*
CHAS. ODIER & CO.
JOHN PEMBERTON.
HENRY VOSE BAXTER.
L. PILIE.
W'M THÉARD.
C. ROSELIUS,
For JOHN LIVINGSTON,
City Attorney.
PAUL E. THÉARD, *N. P.*

Approved.

SEPTEMBER 29, 1855.

STATE OF LOUISIANA,
City of Orleans:

I, Andrew Hero, jr., a notary public and the custodian of notarial records in and for this parish and city of New Orleans, duly commissioned and qualified, do certify the above and foregoing as a true and correct copy of the original act extant in the notarial records of Paul E. Théard, formerly a notary in this city, and whose notarial records I hold as custodian thereof. Attest my hand and seal of custodian aforesaid, at New Orleans, this 28th of October, A. D. 1871.

ANDREW HERO, JR.,
Custodian of Notarial Records.

40 DOCUMENT L⁵.—FILED NOVEMBER 16, 1871.

Contract of city of New Orleans with Chas. Odier & Co.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Paul Emile Théard, notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the honorable John Lawson Lewis, mayor of the city of New Orleans, herein acting in his said capacity, and Mr. James Anderson Lusk, also of said city.

And the said John L. Lewis, acting as aforesaid, declared that, by virtue of the authority in him vested by resolution No. 2364, passed by the common council of the city of New Orleans, and in force by operation of law since the sixteenth August, (1855;) and also by virtue of resolution No. 2373, passed by the common council and approved on the twenty-sixth September, 1855, copies of which resolutions are hereto annexed for reference; and in confirmation of the sale and adjudication made by the city comptroller on the seventeenth September, 1855, as will appear by reference to the proces verbal hereto annexed, he does by these presents grant, bargain, sell, and confirm unto the said James A. Lusk the revenues of all the wharves and landings of this city, lying and being upon the Mississippi River, and contained within the upper or southern limits of the city and the line of Felicity road, collectable under existing ordinances upon all ships, vessels, steamships, steamboats, flat-boats, and water-crafts of any and every description whatsoever, for the term of three years, commencing on the first day of October, eighteen hundred and fifty-five, and ending with the thirtieth day of September, eighteen hundred and fifty-eight.

And, for the purposes contemplated, the said John L. Lewis, in his said capacity, does hereby subrogate the said James A. Lusk to all the rights and privileges of the city of New Orleans, to sue for and collect said revenues.

And the said contracting parties do hereby mutually agree, stipulate, and covenant—

That the said James A. Lusk shall not sell, transfer, assign, set over, or sublease their right, title, or interest in the revenues of said sections to any person or persons whatsoever; and that in case of any sale, transfer, assignment, or sublease, made by any person or persons, of the rights or interests required under this contract, such sale, transfer, assignment, or sublease shall work a forfeiture of said rights and interests so acquired as aforesaid, and the same shall revert to the city of New Orleans.

That the city of New Orleans reserves to itself and excepts from said sale each and every landing and ferry-wharf now existing and each and every nuisance-wharf now existing, and all revenues arising from the same.

The common council also reserves the privilege of changing the location of the ferry-landing in the fourth district, provided the same shall not occupy more space than where it now is.

That said wharves, landings, and levees shall be accepted by the said James A. Lusk in the condition in which the same may be on said first day of October, eighteen hundred and fifty-five; and that said James A. Lusk, so accepting and taking possession of said wharves,
41 landings, and levees, shall repair the same and keep the same in good order and condition during the whole term of three years, commencing with the said first day of October, 1855, and ending with the thirtieth day of September, 1858, provided that the said James A. Lusk shall have no right to build any sheds, warehouses, or platforms on said levee without the permission of the common council.

That the levees named in the foregoing paragraph shall extend back to the line of the street or streets fronting the river—that is to say, the levee comprised within the section hereby adjudicated shall extend back to the line of Water street from the upper line of the fourth district to Adele street, and Tchoupitoulas and New Levee street from Adele to Felicity Road.

That all repairs required to be made under this contract to the levee, landings, and wharves shall be made by the said James A. Lusk, strictly in accordance with the terms, conditions, and stipulations of sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, and twenty of the ordinance of the common council No. 2364, entitled "An ordinance concerning the wharves of the city of New Orleans and providing for farming the revenues thereof," which ordinance is admitted as a part of this act; and in order to identify it herewith, a copy of the same is hereunto annexed and signed ne varietur by the parties, witnesses, and the undersigned notary.

That all works and repairs required to be done by this contract or the aforesaid ordinance shall be done under the supervision of the surveyor and of the committee on streets and landings of the two boards of the common council. And in case of refusal on the part of said James A. Lusk to make said repairs, it shall be the duty of the surveyor to have them made forthwith, at the expense of said James A. Lusk.

That all works and repairs required to be done by this contract or the aforesaid ordinance shall be done by the parties bound to do the same without any delay, after notice thereof is given by the surveyor, with the approval of the committee of streets and landings of the common council.

That the common council may revoke, set aside, and annul the sale, made under and by virtue of this contract or aforesaid ordinance, of revenues collectable in the aforesaid section, whenever the said James A. Lusk shall neglect or fail to make, within a reasonable time, the works and repairs required to be done by this contract or said ordinance; or may have the required work or repairs done at the expense of said James A. Lusk, or may resell the said section for account and risk of said defaulting James A. Lusk.

That the common council may revoke, set aside, and annul the sale, made under or by virtue of this contract or aforesaid ordinance, of revenues collectable in the said section, whenever said James A. Lusk shall neglect or fail to pay, at maturity, any note given in part payment of

the purchase-price of said revenues collectable as aforesaid; and thereupon the city may take immediate possession of the wharf or wharves, landings and levees, within said section, and proceed to collect the revenues collectable within the same.

That the said James A. Lusk shall, in the shortest possible delay, be furnished by authentic act by the surveyor, before the undersigned notary, with an inventory of spars, timbers, stage-planks, etc., used for mooring vessels and for stagings for vessels, and shall give to the surveyor a receipt for the same, and shall at all times keep on hand for the use of vessels a sufficient supply of the same, and shall return
42 to the city of New Orleans, at the end of this lease, an inventory of equal amount and value of the same.

That the said James A. Lusk shall be responsible for all damages which may be claimed of the city by any party or parties who may sustain injury in consequence of the neglect of the aforesaid James A. Lusk to comply with the requirements of this contract.

That the said James A. Lusk shall not order off or remove from any wharf or wharves, within either of the districts, any articles of freight or merchandise landed upon the same from any steamboat until twenty-four hours after said steamboat shall have fully discharged her cargo.

That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations governing the same and under existing ordinances, and no change shall be made without the consent of both parties; that all ships and other water-crafts shall pay the dues collectable under existing city ordinances to the lessee or lessees of the revenue of the district in which they fall due; and that in case of removal of any ship or water-craft from one district to another, the dues so collectable shall be divided pro rata between the lessees of the revenues of the districts in which the ship or vessel may lie, according to the number of days said ship or vessel shall lie and be within the several districts.

This privilege is granted to the said James A. Lusk for and in consideration of the price and sum of forty thousand and one hundred dollars, in payment of which said James A. Lusk has furnished thirty-six notes, dated this day, drawn by him to the order of and endorsed by Messrs. Daniel S. Graham and Josiah Cole, and payable at the Louisiana State Bank, to wit:

Three notes of seven hundred and forty-two dollars and fifty-nine cents each, payable respectively on the fifteenth October, first November, and first December next, (1855.)

Six notes of one thousand four hundred and eighty-five dollars and eighteen cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty six.

Six notes of seven hundred and forty-two dollars and fifty-nine cents each, payable respectively on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-six.

Six notes of one thousand four hundred and eighty-five dollars and eighteen cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-seven.

Six notes of seven hundred and forty-two dollars and fifty-nine cents each, payable respectively on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-seven.

Six notes of one thousand four hundred and eighty-five dollars and eighteen cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-eight.

Two notes of seven hundred and forty-two dollars and fifty-nine cents each, payable respectively on the first day of each of the months of July and August, eighteen hundred and fifty-eight.

And one note of seven hundred and forty-two dollars and seventy-three cents, payable on the first day of September, eighteen hundred and fifty-eight.

43 Which said notes being signed ne varietur by the undersigned notary, in order to identify them herewith, were delivered to the said John L. Lewis, mayor, who hereby acknowledges the delivery thereof.

And now, personally, came and appeared Messrs. Josiah Cole and Samuel Smith, both of this city, who, having read what is above written, declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by the said James A. Lusk, and bind themselves jointly and in solido, in favor of said city, in the sum of ten thousand and twenty-five dollars, payable on demand to said corporation. Now the condition of the above-written bond or obligation is such that if the said James A. Lusk shall well, truly, and faithfully perform and execute the present contract in accordance with the above terms, conditions, and stipulations, then the above-written bond or obligation to be null and void; but otherwise to be and remain in full force and virtue. The said Josiah Cole and Samuel Smith hereby waive the benefit of division and discussion granted by law to sureties.

Done and passed in my office, in the city of New Orleans, in presence of Lucien Pilie and W'm Theard, competent witnesses, on this twenty-ninth day of September, eighteen hundred and fifty-five; and the said parties and witnesses have hereunto signed their names, together with me, notary, after due reading of the foregoing.

(Original signed) JOHN L. LEWIS, *Mayor.*
JAMES A. LUSK.
JOSIAH COLE.
SAMUEL SMITH.

Approved.

C. ROSELIUS,
For JOHN LIVINGSTON, *City Att'y.*
L. PILIE.
W'M THEARD.
PAUL E. THEARD, *Not. Pub.*

SEPTEMBER 29, 1855.

STATE OF LOUISIANA,
Parish of Orleans:

I, Andrew Hero, jr., a notary public and the custodian of notarial records in and for this parish and the city of New Orleans, duly commissioned and qualified, do certify the above and foregoing as a true and correct copy of the original act extant in the notarial records of Paul E. Theard, formerly a notary public in this city, and whose notarial records I hold as custodian thereof.

As attest my hand and seal of custodian aforesaid, at New Orleans, this 27th day of October, A. D. 1871.

ANDREW HERO, JR.,
Custodian of Notarial Records.

44 DOCUMENT L[6].—FILED NOVEMBER 16TH, 1871.

Contract of city of New Orleans with Michael Carvin.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Paul Emile Theard, notary public for the parish and city of New Orleans, State of Louisiana, duly commissioned and sworn, and in the presence of the undersigned witnesses, personally came and appeared the honorable John Lawson Lewis, mayor of the city of New Orleans, herein acting in his said capacity; and Mr. Michael Carvin, also of this city.

And the said John L. Lewis, acting as aforesaid, declared that by virtue of the authority in him vested by resolution No. 2364, passed by the common council of the city of New Orleans, and in force by operation of law since the sixteenth August last, (1855;) and also, by virtue of resolution No. 2416, passed by the common council, and approved on the twenty-fourth inst., copies of which resolutions are hereto annexed for reference; and in confirmation of the sale and adjudication made by the city comptroller on the eighteenth inst., as will appear by reference to the process hereto annexed, he does, by these presents, grant, bargain, sell, and confirm unto the said Michael Carvin the revenues of all the wharves and landings of this city, lying and being upon the Mississippi River, and contained within the lower line of that portion of the river-front of said city, which is appropriated to the Canal street ferry and the lower line of Toulouse street, collectable under existing ordinances upon all ships, vessels, steamships, steamboats, flat-boats, and water-crafts of any and every description whatsoever, for the term of three years, commencing on the first day of October, eighteen hundred and fifty-five, and ending with the thirtieth day of September, eighteen hundred and fifty-eight.

And for the purpose contemplated, the said John L. Lewis, in his said capacity, does hereby subrogate the said Michael Carvin to all the rights and privileges of the city of New Orleans to sue for and collect said revenues.

And the contracting parties do hereby mutually agree, stipulate, and covenant:

That the said Michael Carvin shall not sell, transfer, assign, set over, or sublease his right, title, or interest in the revenues of said section to any person or persons whatso'ver; and that, in case of any sale, transfer, assignment, or sublease made by any person or persons of the rights and interests acquired by this contract, such sale, transfer, assignment, or sublease shall work a forfeiture of said rights and interests so acquired as aforesaid; and the same shall revert to the city of New Orleans.

That the city of New Orleans reserves to itself and excepts from said sale each and every landing and ferry-wharf now existing, and each and every nuisance-wharf now existing, and all revenues arising from the same.

That said wharves, landings, and levees shall be accepted by the said Michael Carvin, in the condition in which the same may be on said first day of October, eighteen hundred and fifty-five; and that Michael Carvin so accepting and taking possession of said wharves, landings, and levees, shall repair the same, and keep the same in good order and condition during the whole term of three years, commencing with
45 the said first day of Oct., eighteen hundred and fifty-five, and

ending with the thirtieth day of September, eighteen hundred and fifty-eight; provided that said Michael Carvin shall have no right to build any shed, warehouses, or platforms on said levee without the permission of the common council.

That the levees named in the foregoing paragraphs shall extend back to the line of Front street from Canal to Custom-house streets, and to New Levee street, from Custom-house to Toulouse streets.

That all the repairs required to be made under this contract to the levees, landings, and wharves shall be made by the said Michael Carvin, strictly in accordance with the terms, conditions, and stipulations of sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, and twenty of the ordinance of the common council No. 2364, entitled "An ordinance concerning the wharves of the city of New Orleans, and providing for farming the revenues thereof," which ordinance is admitted as a part of this act, and in order to identify it herewith, a copy of the same is hereto annexed, and signed ne varietur by the parties, witnesses, and the undersigned notary.

That all works and repairs required to be done by this contract or the aforesaid ordinance shall be done under the supervision of the surveyor and the committee of streets and landings of the two boards of the common council; and in case of refusal on the part of said Michael Carvin to make said repairs, it shall be the duty of the surveyor to have them made forthwith at the expense of the said Michael Carvin.

That all works and repairs required to be done by this contract or aforesaid ordinance shall be done by the parties bound to do the same, without any delay, after notice thereof is given by the surveyor, with the approval of the committee on streets and landings of the common council.

That the common council may revoke, set aside, and annul the sale, made under and by virtue of this contract or aforesaid ordinance, of revenues collectable in the aforesaid section, whenever the said Michael Carvin shall neglect or fail to make, within a reasonable time, the works and repairs required to be done by this contract or said ordinance, or may have the required work or repairs done at the expense of the said Michael Carvin, or may resell the said section for account and risk of said defaulting Michael Carvin.

That the common council may revoke, set aside, and annul the sale, made under or by virtue of this contract or aforesaid ordinance, of revenues collectable in the said section, whenever the said Michael Carvin shall neglect or fail to pay at maturity any note given in part payment of the purchase-price of said revenues collectable as aforesaid, and thereupon the city may take immediate possession of the wharf or wharves, landings, and levees within said section, and proceed to collect the revenues collectable within the same.

That said Michael Carvin shall, in the shortest possible delay, be furnished by authentic act by the surveyor, before the undersigned notary, with an inventory of all spars, timbers, stage-planks, etc., used for mooring vessels and for staging for vessels, and shall give the surveyor a receipt for the same, and shall at all times keep on hand, for the use of vessels, a sufficient supply of the same, and shall return to the city of New Orleans, at the end of this lease, an inventory of equal amount and value of the same.

That said Michael Carvin shall be responsible for all damages which may be claimed by the city, by any party or parties who may sustain injury in consequence of the neglect of the aforesaid Michael Carvin to comply with the requirements of this contract.

46 That the said Michael Carvin shall not order off or remove from any wharf or wharves within either of the districts, any articles of freight or merchandise landed upon the same from any steamboat, until twenty-four hours after said steamboat shall have fully discharged her cargo.

That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations governing the same, and under existing ordinances, and no change shall be made without the consent of both parties; that all ships and other water-crafts shall pay the dues collectable under existing ordinances, to the lessee or lessees of the revenues of the district in which they fall due, and that in case of removal of any ship or water-craft from one district to another, the dues so collectable shall be divided pro rata between the lessees of the revenues of the district in which the ship or vessel may lie, according to the number of days said ship or vessel shall lie and be within the several districts.

This privilege is granted to the said Michael Carvin for and in consideration of the price and sum of eighty-nine thousand dollars, in deduction whereof the said Michael Carvin has paid that of sixteen hundred and forty-eight dollars and fourteen cents, for which the said John L. Lewis does hereby grant a full acquittance and discharge.

And for the remaining sum of eighty-seven thousand three hundred and fifty-one dollars and eighty-six cents, the said Michael Carvin has furnished his thirty-five promissory notes, dated this day, drawn by him to the order of and endorsed by Messrs. James Davis, P. Drumm, J. McLanathan, and F. Martin, and payable at the Louisiana State Bank, as follows:

Two notes of sixteen hundred and forty-eight dollars and fourteen cents each, payable respectively on the first day of each of the months of November and December, 1855.

Six notes of three thousand two hundred and ninety-six dollars and twenty-nine cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-six.

Six notes of sixteen hundred and forty-eight dollars amd fourteen cents each, payable respectively on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-six.

Six notes of three thousand two hundred and ninety-six dollars and twenty-nine cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-seven.

Six notes of sixteen hundred and forty-eight dollars and fourteen cents each, payable respectively on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-seven.

Six notes of three thousand two hundred and ninety-six dollars and twenty-nine cents each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-eight.

Two notes of sixteen hundred and forty-eight dollars and fourteen cents each, payable respectively on the first day of each of the months of July and August, eighteen hundred and fifty-eight.

And one note of sixteen hundred and forty-eight dollars and forty cents, payable on the first day of September, eighteen hundred and fifty-eight; which notes being signed ne varietur by the undersigned no-

tary, to identify them herewith, were delivered to the said John L. Lewis, mayor, who hereby acknowledges the delivery thereof.

And the said John L. Lewis did thereupon declare that he has
47 remitted to the said M. Carvin the sum of three thousand and seventy-five dollars and twenty-seven cents, amount of the revenues collectable by the city, since the first day of the present month, the receipt whereof is hereby acknowledged by the said Carvin, who grants a full acquittance thereof.

And now personally intervened in these presents, Messrs. John Davis, Philip Drumm, J. McSanathan, F. Martin, all of this city, who, having read what is above written, declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by said Carvin, and bind themselves jointly and in solido in favor of the said city, in the sum of twenty-two thousand two hundred and fifty dollars, payable on demand to said corporation.

Now, the condition of the above-written bond or obligation is such, that if the said Michael Carvin shall well, truly, and faithfully perform and execute the present contract in accordance with the above terms, conditions, and stipulations, then the above-written bond or obligation to be null and void; but otherwise to be and remain in full force and virtue. The said James Davis, Philip Drumm, J. McLanathan, and F. Martin hereby waive the benefit of division and discussion granted by law to sureties.

Done and passed at New Orleans, in my office, in presence of John C. Theard and William Théard, competent witnesses, who have hereunto signed their names with the said parties, and me, notary, after reading of the foregoing, on this twenty-sixth day of September, eighteen hundred and fifty-five.

(Original signed)

JOHN L. LEWIS, *Mayor.*
M. CARVIN.
JAMES DAVIS.
PHILIP DRUMM.
J. McLANATHAN.
FRANCIS MARTIN.
JOHN C. THEARD.
WM. THEARD.

Approved October 26, 1855.

JOHN LIVINGSTON,
City Attorney.
PAUL E. THEARD, *N. P.*

STATE OF LOUISIANA,
City of New Orleans:

I, Andrew Hero, jr., a notary public and the custodian of notarial records in and for this parish and city of New Orleans, duly commissioned and qualified, do certify the above and foregoing as a true and correct copy of the original act extant in the notarial records of Paul E. Théard, formerly a notary in this city, and whose notarial records I hold as custodian thereof.

Attest my hand and seal of custodian aforesaid, at New Orleans, this 30th of October, A. D. 1871.

ANDREW HERO, JR.,
Custodian of Notarial Records.

48 DOCUMENT LL[1].

Lease of wharves to Thomas A. Stone.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this thirty-first day of August, in the year of our Lord one thousand eight hundred and fifty-eight, and the eighty-third of the Independence of the United States of America—

Before me, Eusebe Bouny, notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the honorable Gerard Stith, mayor of the city of New Orleans, herein acting in that capacity, and Mr. Thomas A. Stone, of this city.

And the said Gerard Stith, mayor as aforesaid, declared, that, by virtue of the authority in him vested by resolution No. 4137, passed by the common council of the city of New Orleans, and approved on the nineteenth instant, a copy of which resolution is hereto annexed for reference, and in confirmation of the sale and adjudication made by the city comptroller, on the sixteenth instant, as it will appear by the proces verbal hereto annexed, he does by these presents grant, bargain, sell, and confirm unto the said Thomas A. Stone, the revenues of all the wharves and landings of this city lying and being upon the Mississippi River and contained within the lower line of that portion of the river-front of said city, which is appropriated to the Esplanade ferry, and the lower or eastern limit of the city, excepting therefrom six wharves, which shall be built suitable for the purpose, under the supervision of the city surveyor, at the expense of the city, and shall be located at the upper limit of Barthelemy street and the lower line of Lesseps street; the said wharves are hereby appropriated solely for the use of the shipping of the whole port of New Orleans, to arrange their tons for departure, and the said wharves shall be kept in proper order at the expense of the lessee, the city reserving the right of changing or renewing the same, as the common council may think proper; said revenues being collectable, under existing ordinances, upon all ships, vessels, steamships, steamboats, flatboats, and water-crafts of any and every description whatsoever, for the term of five years and nine months, commencing on the first day of October, eighteen hundred and fifty-eight, and ending with the thirtieth of June, eighteen hundred and sixty-three (1863;) and for the purpose contemplated, the said Gerard Stith, in his said capacity of mayor, does hereby subrogate the said Thomas A. Stone to all the rights and privileges of the city of New Orleans, to sue for and collect said revenues; and the contracting parties do hereby mutually agree, stipulate, and covenant:

That the said Thomas A. Stone shall not sell, transfer, assign, set over, subrogate, or sublease his right, title, and interest in the revenues of said section to any person or persons whatsoever; and in case of any sale, transfer, assignment, subrogation, or sublease, made to any person or persons, of the rights and interests acquired under and by virtue of this contract, such sale, transfer, assignment, subrogation, or sublease shall work a forfeiture of said rights and interests so acquired as aforesaid, and the same shall revert to the city of New Orleans.

That the city of New Orleans reserves to herself, and excepts from said sale, each and every landing and ferry-wharf now existing,
49 and each and every nuisance-wharf now existing, and all the revenues arising from the same.

That the said purchaser shall accept and take possession of the

wharves, landings, and levees contained within the section adjudicated to him, in the condition the same may be on the first day of October next, 1858; and the said purchaser or lessee, so accepting and taking possession of the said wharves, landings and levees, shall repair the same, and keep the same in good order and condition during the whole term of four years and nine months, commencing with the first day of October, 1858, and ending with the 30th June, 1863, provided the lessee shall have no right to build any sheds, warehouses, or platforms on the said wharves without the permission of the common council.

That the levees named in the foregoing paragraph shall extend back to the line of street or streets fronting the river; that is to say, the levee comprised within the section herein sold shall extend back to the public road on New Levee street; and it is hereby well understood that the city claims and reserves to herself the right to appropriate, sell, lease, and use, or in any manner, (as may be deemed expedient by the common council,) of any portion of the levees comprised within said section, whenever any of said levees shall become, in the opinion of the common council, unproductive, inoperative, or useless to and for the great purposes of commerce or public use.

That the repair of the levees required to be made by the said purchaser or lessee as aforesaid shall consist in grading the same according to the grades already established, in covering the same with hard substances, such as lake and oyster shells or gravel; in keeping the same in good order, by filling up all holes on their first appearance with hard substance, as above mentioned; in filling up with river-sand all parts of the same which may cave or sink below the grades as aforesaid; and in keeping the bulkheads on the outside of the same always in good order and condition, and whenever the batture shall form so as to require the levee to be extended, the lessee shall, on the order of the common council, fill up such parts of the batture, and build such levees as said common council may deem necessary, as well as all new bulkheads. The repairs of the wharves to be made by the purchaser or lessee under this contract shall consist in repairing all holes in the flooring of said wharves and inclined planes immediately upon their first appearance; in raising all portions of the wharves which may have sunk or which may sink below the levels now established; in taking out and renewing all caps and stringers, piles, fender-piles, flooring, etc., which may be found rotten or decayed; in building anew all wharves which, from general decay, may require the same; and extending into the river all wharves which may require extension, so as to have at all times a depth of water of twenty feet at the water-line of each and every wharf used for the landing and discharge of ships or steamships, and ten feet of water at the steamboat-wharves; that, in making the repairs aforesaid, the piles used shall be of lake or river timber of the best quality, eleven by eleven inches square at one end, and nine by nine inches square at the other end, and shall be driven from fifteen to twenty feet into the solid ground at distances of ten feet from the centers. The heads of the piles shall be squared according to the levels to be given by the city surveyor, and shall receive and support eleven by eleven inches square caps, which shall be strongly fastened to each of the said piles with drag-nails one inch square by eighteen inches long. The stringers used shall be at least ten inches square; shall rest at right angles upon the caps at distances of five feet from the centers, and shall be strongly fastened to each intersection with a cap with drag-nails one inch square by sixteen inches flooring. The plank used for the flooring shall be of yellow pine of the best

quality, twelve inches wide, not less than three inches thick, and not less than fifteen feet long. They shall be strongly nailed to each of the stringers with seven-inch pressed pikes, two at each end of each plank, and one at each intersection of the stringers.

That each and every wharf used for the landing and discharge of steamboats shall have an inclined plane projecting from the foot thereof, of at least thirty feet in width; that on the outside of said inclined plane and adjoining the last row of piles thereof, there shall be driven a row of piles which shall receive a cap eleven by eleven inches square, with nine-inch tennons and mortices, and on the top of said cap twelve inches square which shall be fastened to the two other caps, at a distance of five feet, with screw-bolts of one and one-half inches in diameter, and of suitable length; that the four rows of piles of each inclined plane shall be braced every ten feet with ten by ten inch braces, which shall be fastened to each pile with screw-bolts of one inch diameter and of suitable length; and that the said lessee, accepting and taking possession of said wharves in accordance with the above contract, shall repair and keep in good order and condition, during the whole of said term of four years and nine months, such inclined planes aforesaid as do now exist, connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no inclined planes as above required at the time of accepting and taking possession of said wharf or wharves as aforesaid, then, that the purchaser or lessee so accepting and taking possession of the same shall cause said inclined planes to be built at his own expense, and shall keep the same in repair, as aforesaid, during the whole of said term of four years and nine months.

That at each and every wharf used for the discharge of ships a row of fender piles shall be driven, each pile ten feet apart and fastened in a strong manner to the piles of the wharves with at least two screw-bolts of one and *and* a half inches in diameter; that on the front of said wharves two fender-caps shall be placed, one on a level with the flooring of the wharf and the other at five feet above the low-water mark; said fenders shall be twelve by twelve inches square and to be fastened to the piles of the wharf with screw-bolts one and a half inches in diameter; and that said lessee, in taking possession of said wharves, shall repair and keep in good order and condition, during the whole term of this lease, such fender-piles and fender-caps as do now exist connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no fender-caps, as above required, at the time of accepting and taking possession of said wharves, then said lessee shall cause said fender-piles and fender-caps to be driven and placed as above required at his own cost, and shall keep the same in repair during the whole of said term of four years and nine months.

That at each and every wharf used for the landing and discharge of steamships, fenders shall be driven at equal distances of thirty feet, and each fender shall be composed of four piles eleven by eleven inches square strongly fastened together and to the wharves, with at least six screw-bolts of one and a half inches in diameter; that the four outside rows of piles of each and every wharf used for the landing and discharge of steamships and of ships shall be braced every ten feet with ten by ten inch braces, which shall be fastened to each of said piles with screw-bolts of one inch in diameter; and that said lessee shall accept and take possession of said wharf or wharves in accordance with
51 this contract, and shall repair and keep in good order and condition, during the whole term of this lease, such fenders and

braces as do now exist, connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no fenders or braces as above required, at the time of accepting and taking possession of the same, shall cause said fenders to be driven, and said braces to be made at his own cost, and shall keep the same in good repairs during the whole term of four years and nine months.

That on all the wharves accepted and taken possession of by the said Thomas A. Stone, lessee, mooring-piles twelve inches square shall be driven as follows, to wit: On the steamboat wharves, single piles along the inclined planes, at distances of forty feet from the centers; on the said steamship or ship-wharves double piles wherever the harbor-master may direct; that each of the aforesaid mooring-piles shall be strongly fastened to the piles of the wharves with at least two screw-bolts of one inch in diameter, and shall project three and a half feet above the flooring of the wharf or wharves; and said lessee, in accepting and taking possession of said wharves, shall repair and keep in good order and condition, during the whole of said term of four years and nine months, such mooring-piles as do now exist connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no mooring-piles, as above required, at the time of accepting and taking possession of said wharf or wharves as aforesaid, the said lessee shall cause the said mooring-piles to be driven and fastened at his cost, and shall keep the same in good order and repair and condition during the whole of said term of four years and nine months.

That said Thomas A. Stone shall be bound, whenever ordered by the common council, to build all additional new wharves that may be necessary, and he shall also immediately cause to be constructed all wharves that may be necessary for the landing of flat-boats.

That all works and repairs to be done by this contract shall be done under the supervision of the surveyor and chairmen of the committees on streets and landings of the two boards of the common council; and in case of refusal on the part of said lessee to make all said works and repairs, it shall be the duty of the surveyor to have them made forthwith at the expense of the said lessee.

That all works and repairs required to be done by the said Thomas A. Stone, lessee, after fifteen days' notice thereof is given by the surveyor.

That it is well understood that, in case of neglect or failure by said Thomas A. Stone, lessee, to commence or finish the work during the time mentioned in the orders of the surveyor, the common council shall have the right to annul this lease without putting the lessee in default, as required by Article 1905 of the Civil Code, and without applying to a court of justice to annul the same, and without indemnity to the said lessee; and it is also well understood that, in case said lessee shall fail to make or shall abandon the repairs, the said lessee shall forfeit all notes he may have furnished to the city, and that the common council shall have the right to resell the revenues of said section for account and risk of said defaulting lessee and his securities; that the common council may revoke, set aside, and annul this contract whenever the said lessee shall neglect or fail to pay, at maturity, any note given in part payment of the purchase-price of the aforesaid revenues, and thereupon the city may take immediate possession of the wharves, landings, and levees contained in the section herein sold, and proceed to collect the revenues collectable within the same, or resell such section for account and risk of said Thomas A. Stone, as the council may deem proper.

52 That said lessee must be furnished by the surveyor with an in-

ventory of all spars, timbers, stage-planks, etc., used for mooring vessels and for staging vessels, and shall give to the surveyor a receipt for the same, and shall at all times keep on hand for the use of vessels a sufficient supply of the same, and shall return to the city, at the end of this lease, an inventory of equal amount and value of the same; that the said lessee and his surety shall, in solido, be responsible for all damages which may be claimed of the city by any party or parties who may sustain injury or damage in consequence of the neglect of the said lessee to comply with the requirements of this contract.

That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations now governing the same, and under existing ordinances, and no change shall be made without the consent of both parties; that all ships and other water-crafts shall pay the dues collectable under existing ordinances to the aforesaid lessee, in his section; and that, in case of removal of any ship or water-craft from one section to another, the dues so collectable shall be divided pro rata between the lessees in the section of which said ship or water-craft may be, according to the number of days said ship or water-craft lie and be within the several sections.

That the whole of the said sixth section be, and is hereby, appropriated as a landing for shipping, except that portion between Poland street lower line and the lower line of the city, which may be appropriated, at will of the lessee, as a landing for shipping, steamships, steamboats, or flat-boats, and also excepting that portion reserved for the departure of tons.

And in order to come to a better and full understanding, the contracting parties do further agree to carry out and execute in good faith this contract to all its extents and purposes, according to the terms, conditions, and specifications contained in ordinance 4007 of the common council, entitled "An ordinance concerning the wharves of the city of New Orleans, and providing for farming the revenues thereof," and approved on the twenty-first of June last, as well as if said ordinance was extended at length in the body of this act, a copy of the same being hereto annexed and signed ne varietur by the contracting parties, the undersigned witnesses, and notary, in order to be identified herewith.

The privileges granted to the said Thomas A. Stone for and in consideration of the price and sum of one hundred and sixty-five thousand dollars, in part payment of which the said Thomas A. Stone has furnished fifty-seven notes, dated this day, drawn by him to the order of, and endorsed by, Mr. H. H. Stanley, and payable at the Louisiana State Bank, to wit:

Twenty-seven notes of one thousand eight hundred and ninety-five dollars and fifty-five cents each, ($1,896.55,) and payable respectively on the following days, viz:

Fifteenth October, 1858.
First November, 1858.
First December, 1858.
First July, 1859.
First August, 1859.
First September, 1859.
First October, 1859.
First November, 1859.
First December, 1859.
First July, 1860.
First August, 1860.
53 First September, 1860.

First October, 1860.
First November, 1860.
First December, 1860.
First July, 1861.
First August, 1861.
First September, 1861.
First October, 1861.
First November, 1861.
First December, 1861.
First July, 1862.
First August, 1862.
First September, 1862.
First October, 1862.
First November, 1862.
First December, 1862.

Twenty-nine notes of three thousand seven hundred and ninety-three dollars and ten cents each, ($3,793.10,) and payable respectively on the following days, viz:

First January, 1859.
First February, 1859.
First March, 1859.
First April, 1859.
First May, 1859.
First June, 1859.
First January, 1860.
First February, 1860.
First March, 1860.
First April, 1860.
First May, 1860.
First June, 1860.
First January, 1861.
First February, 1861.
First March, 1861.
First April, 1861.
First May, 1861.
First June, 1861.
First January, 1862.
First February, 1862.
First March, 1862.
First April, 1862.
First May, 1862.
First June, 1862.
First January, 1863.
First February, 1863.
First March, 1863.
First April, 1863.
First May, 1863.

And lastly, one note of three thousand seven hundred and ninety-three dollars and twenty-five cents, ($3,793.25,) payable on the first day of June, eighteen hundred and sixty-three; which notes being signed ne varietur, by the undersigned notary, to identify them herewith, were handed to the said Gerard Stith, mayor, who accepted the receipt thereof.

And now personally intervened in these presents: Mr. Henry

54 Hope Stanley, of this city, who, having read what is above written, declared that he hereby guarantees to the city of New Orleans of the foregoing contract of lease by the said Thomas A. Stone, and binds himself jointly and in solido in favor of the city of New Orleans, in the sum of forty-one thousand two hundred and fifty dollars ($41,250,) payable on demand of said corporation.

Now, the condition of the above-written bond or obligation is such, that if the said Thomas A. Stone shall well, truly, and faithfully perform and execute the present contract in accordance with the terms thereof, then the said bond to be null and void; but otherwise to be and remain in full force and virtue, the said H. H. Stanley hereby waiving the benefit of division and discussion granted by law to sureties.

Done and passed in my office in New Orleans, the day, month, and year first above written, in presence of Paul Emile Theard and Oscar LeBlanc, competent witnesses, why have hereunto signed their names with the parties and me, notary, after due reading of the foregoing.

(Original signed)

THOMAS A. STONE.
H. H. STANTLEY.
GERARD STITH, *Mayor.*

Correct:

J. J. MICHEL,
City Attorney.

PAUL E. THEARD.
OSCAR LEBLANC.
F. BOUNY,
Notary Public.

A true copy:
New Orleans, November 4, 1871.

F. BOUNY,
Notary Public.

55 DOCUMENT LL².—FILED NOVEMBER 16, 1871.

Lease of wharves to John Baker.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this thirty-first day of August, in the year of our Lord one thousand eight hundred and fifty-eight, and the eighty-third of the Independence of the United States of America, before me, Eusebe Bouny, notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the honorable Gerard Stith, mayor of the city of New Orleans, and herein acting in that capacity, and Mr. John Baker, also of this city.

And the said Gerard Stith, mayor as aforesaid, declared, that by virtue of the authority in him vested by resolution No. 4137, passed by the common council of the city of New Orleans, and approved on the nineteenth instant, a copy of which resolution is hereto annexed for reference, and in confirmation of the adjudication and sale made by the city comptroller on the sixteenth instant, as it will appear by reference to the proces verbal hereto annexed, he does, by these presents, grant, bargain, sell, and confirm unto the said John Baker the revenues of all the wharves and landings of this city, lying and being upon the Mississippi River, and contained within the upper or southern limit of said

city, and the upper limit of Felicity road, constituting the first section of the wharves of said city. Said revenues to be collectable, under existing ordinances, upon all ships, vessels, steamships, steamboats, flatboats, and water crafts of any and every description whatsoever, for the term of four years and nine months, commencing on the first day of October, (1858,) eighteen hundred and fifty-eight, and ending with thirtieth June, eighteen hundred and sixty-three.

And for the purposes contemplated, the said Gerard Stith, in his said capacity of mayor, does hereby subrogate the said John Baker to all the rights and privileges of the city of New Orleans to sue for and collect said revenues.

And the contracting parties do hereby mutually agree, stipulate, and covenant that the said John Baker shall not sell, transfer, assign, set over, subrogate, or sublease his right, title, and interest in the revenues of said section to any person or persons whatsoever; and in case of any sale, transfer, assignment, subrogation, or sublease, made by any person or persons, of the rights and interests acquired under and by virtue of this contract, such sale, transfer, assignment, subrogation, or sublease shall work a forfeiture of such rights so acquired as aforesaid, and the same revert to the city of New Orleans.

That the city of New Orleans reserves to herself, and excepts from said sale, each and every landing and ferry wharf now existing, and each and every nuisance wharf now existing, and all the revenues arising from the same; and also a portion of the wharves of one hundred and fifty feet on the river-front, starting from the upper limit of the city and running down, for a ferry landing, is reserved by the city, and the revenues thereof.

That the said purchaser or lessee shall accept and take possession of the wharves, landings, and levees contained within the section adjudicated to him, in the condition in which they may be, on the first day
56 of October next, (1858;) and the said purchaser or lessee so accepting and taking possession of the said wharves, landings, and levees shall repair the same, and keep the same in good order and condition during the whole term of four years and nine months, commencing with the first day of October, 1858, and ending with the thirtieth of June, 1863; provided, that the lessee shall have no right to build any shed, warehouse, or platform on the said wharves without permission of the common council.

That the levees named in the foregoing paragraph shall extend back to the line of the street or streets fronting the river; that is to say, the levee comprised within the section herein sold shall extend back to the line of Water street, from the upper line of the fourth district to Adele street, and to Tchoupitoulas and New Levee streets from Adele street to Felicity road; and it is hereby well understood that the city claims and reserves to herself the right to appropriate, sell, lease, and use, or in any manner dispose, as may be deemed expedient by the common council, of any portion of the levees comprised within said section, whenever any of said levees shall become, in the opinion of the common council, unproductive, inoperative, or useless to and for the great purpose of commerce or public use.

That the repairs of the levees required to be made by the said purchaser or lessee shall consist in grading the same, according to the grades already established; in covering the same with some hard substance, such as lake or oyster shells or oyster-shells and gravel; in keeping the same always in good order, by filling up all holes on their first appearance with hard substance as above mentioned; in filling up

with river-sand all parts of the same which may cave or sink below the grades aforesaid, and in keeping the bulkheads on the outside of the same always in good condition; and whenever the batture shall form so as to require the levee to be extended, the lessee shall, on the order of the common council, fill up such parts of the batture and build such levees as the common council may deem necessary, as well as all new bulkheads.

That the repairs of the wharves to be made by the purchaser or lessee under this contract shall consist in repairing all holes in the wharves and inclined planes immediately upon their first appearance; in raising all portions of the wharves which have sunk, or which may sink, below the levels now established; in taking out and renewing all caps and stringers, piles, fender-piles, flooring, etc., which may be found rotten or decayed; in building anew all wharves which, from general decay, may require the same; and extending into the river all wharves which may require extension, so as to have at all times a depth of water of twenty feet at the water-line of each and every wharf used for the landing and discharge of ships, and depth of ten feet at the water-line of each and every wharf used for the landing and discharge of steamboats.

That in making the repairs aforesaid the piles used shall be of lake or river timber, eleven by eleven inches square at one end and nine by nine inches square at the other end, and shall be driven from fifteen to twenty feet into the solid ground, at distances of ten feet from the centres; the piles shall be squared according to the levels to be given by the city surveyor, and shall receive and support eleven by eleven square caps, which shall be strongly fastened to each of the said piles with drag-nails one inch square by eighteen inches long. The stringers used shall be, at the least, ten inches square; shall rest at right angles upon the caps, at distances of five feet from the centres, and shall be strongly fastened at each intersection with a cap with drag-nails one inch square by sixteen inches long. The plank used for the floor-
57 ing shall be of yellow pine of the best quality, twelve inches wide, not less than three inches thick, and not less than fifteen feet long. They shall be strongly nailed to each of the stringers with seven-inch pierced spikes, two at each end of each plank, and one at each intersection of the stringers.

That each and every wharves used for the landing and discharge of steamboats shall have an incline' plane projecting from the foot thereof of at least thirty feet width; that on the outside of said incline' plane and adjoining the last row of piles thereof, there shall be driven a row of piles which shall receive a cap eleven by eleven inches square, with nine-inch tenons and mortises; and on the top of said cap shall rest a fender-cap twelve inches square, which shall be fastened to the other caps, at the distance of five feet, with screws, both of one and one-half inches in diameter, and of suitable length; that the four rows of piles of each incline' plane shall be braced every ten feet with ten by ten inch braces, which shall be fastened to the two other caps, at a distance of five feet, with screws, both of one and one-half inches in diameter, and of suitable length; that the four rows of piles of each incline' plane shall be braced every ten feet with ten by ten inch braces, which shall be fastened to each pile with screws, both of one inch diameter, and of suitable length; and that the purchaser or lessee, in accepting and taking possession of said wharves in accordance with this contract, shall repair and keep in good order and condition, during the whole of said term of four years and ten months, such incline' planes aforesaid as do now exist, connected with the wharf or wharves so accepted and taken possession

of; and in case there shall be no incline' plane, as above required, at the time of accepting and taking possession of said wharf or wharves, then the said purchaser or lessee shall cause said incline' plane to be built at his expense, and shall keep the same in repair as aforesaid during the whole of said term of four years and nine months.

That at each and every wharf used for the landing and discharge of ships a row of fender-piles shall be driven, each pile ten feet apart, and fastened in a strong manner to each pile with at least two screws, both of one and a half inches diameter; that on the front of said wharves two fender-caps shall be placed, one on a level with the flooring of the wharf, and the other at five feet above low-water mark. Said fenders shall be twelve by twelve inches square, and to be fastened to the piles of the wharf with screws one and one-half inches in diameter; and that said lessee, in taking possession of said wharves, shall repair and keep in good order and condition, during the whole term of this lease, such fender-piles and fender-caps as do now exist, connected with the wharves so accepted and taken possession of; and in case there shall be no fender-caps, as above required, at the time of accepting and taking possession of said wharves, then said lessee shall cause said fender-pile and fender-caps to be driven and placed as above required at his cost, and shall keep the same in repair during the whole of said four years and nine months.

That at each and every wharf used for the landing and discharge of steamships, fenders shall be driven at equal distances of twenty feet; and each fender shall be composed of four piles eleven by eleven inches square, strongly fastened together and to the wharves with at least six screw-bolts, of one and one-half inches in diameter; that the four outside rows of piles of each and every wharf used for the landing and discharge of steamships and ships shall be braced every ten feet with ten by ten inch braces, which shall be fastened to each of said piles with screw-bolts of one inch in diameter; and that said lessee, in accepting and taking possession of said wharves, shall keep in good order
58 and condition during the whole term of four years and nine months, the length of this lease, such fenders and braces as do now exist, connected with the wharves so accepted by the said lessee; and in case there shall be no fenders or braces at the time of accepting and taking possession of said wharves, then said lessee shall cause said fenders to be driven, and said braces to be made, at his own cost, and shall keep the same in good repair and condition during the whole of said term of four years and nine months.

That on all the wharves accepted and taken possession of by said John Baker, lessee, mooring-piles twelve inches square shall be driven, as follows, to wit: on the steamboat wharves, single piles along the incline planes, at distances of forty feet from the centres; on the steamship and ship wharves, double piles, wherever the harbor-master shall direct; that each of the aforesaid mooring-piles shall be strongly fastened to the piles of the wharves, with at least two screw-bolts of one-inch in diameter, and shall project three and a half feet above the flooring of the wharves; and said lessee, in accepting and taking possession of the said wharves, shall repair and keep in good order and condition, during the whole of said term of four years and nine months, such mooring-piles as do now exist, connected with the wharves so accepted and taken possession of, and in case there shall be no mooring-piles, as above required, at the time of accepting and taking possession of said wharf or wharves as aforesaid, then said lessee shall cause said mooring-piles to

be driven and fastened at his own cost, and shall keep the same in good repair during the whole of said term of four years and nine months.

That said John Baker, lessee, shall be bound, whenever ordered by the common council, to build all additional wharves that may be necessary; and he shall, further, cause to be constructed all wharves that may be necessary for the landing of flat-boats.

That all works and repairs to be done under this contract shall be done under the supervision of the surveyor and chairman of the committee on streets and landings of the two boards of the common council; and in case of the refusal of said lessee to make all said works and repairs, it shall be the duty of the surveyor to have them made forthwith, at the expense of said lessee.

That all works and repairs required to be done by said contract shall be done by said John Baker, lessee, after fifteen days' notice thereof is given by the surveyor.

That it is well understood, that in case of neglect or failure by said John Baker, lessee, to commence or finish the works within the time mentioned in the orders of the surveyor, the common council shall have the right to annul this lease without putting the lessee in default, as required by Article 1905 of the Civil Code, and without applying to a court of justice to annul the same, and without indemnity to such lessee; and it is also well understood that in case said lessee shall fail to make, or shall abandon the repairs, the said lessee shall forfeit all notes he may have furnished to the city; and that the common council shall have the right to resell the revenue of said section, for account and risk of said defaulting lessee and his sureties.

That the common council may revoke, set aside and annul this contract whenever the said lessee shall neglect or fail to pay at maturity any note given in part payment of the purchase price of the aforesaid revenues; and thereupon the city may take immediate possession of the wharves, landings, and levees contained in the section herein sold, and proceed to collect the revenues collectable within the same, or resell such section, for account and risk of said John Baker, as the council may deem proper.

59 That said lessee shall be furnished by the surveyor with an inventory of all spars, timbers, stage-planks, etc., used for mooring vessels, and shall give to the said mayor a receipt for the same, and shall at all times keep on hand for the use of vessels a sufficient supply of the same, and shall return to the city, at the end of this lease, an inventory of equal amount and value of the same.

That the said lessee and his securities shall, in solido, be responsible for all damages which may be claimed of the city by any party or parties who may sustain injury or damage in consequence of the neglect of said lessee to comply with the requirements of this contract.

That all the aforesaid wharves, landings, and levees shall continue subject to the police regulation now governing the same, and under existing ordinances, and no change shall be made without the consent of both parties; that all ships and other water-crafts shall pay the dues collectable under the existing ordinances to the aforesaid lessee, in his section; and in case of the removal of any ship or water-craft from one section to another, the dues so collectable shall be divided pro rata between the lessees of the sections in which said steamboats, ships, or other vessels may be, according to the number of days said ship and vessel lie and be within the several sections.

That all that extent of the port of the first section, comprised between Toledano and Fifth or Washington streets, and between Second and

Felicity streets, be, and the same is hereby, appropriated as a landing for the shipping; and that all the extent of the port of the first section comprised within Second and Fifth streets is appropriated as a landing for flat-boats.

And in order to come to a better and full understanding, the contracting parties do agree to carry out and execute in good faith this contract to all the interests and purposes, according to the terms, conditions, and stipulations contained in ordinance No. 4007 of the common council, entitled "An ordinance concerning the wharves of the city of New Orleans, and providing for farming the revenues thereof," and approved on the twenty-first of June last, as well as if said ordinance was extended at length in the body of this act, a copy of the same being hereto annexed, and signed ne varietur by the contracting parties, the undersigned witnesses and notary, in order to be identified herewith.

This privilege is granted to the said John Baker for and in consideration of the price and sum of one hundred and fifteen thousand dollars, in payment of which the said John Baker has furnished fifty-seven notes, dated this day, and drawn by him to the order of and endorsed by W. N. Batson and C. A. Eager, and payable at the Louisiana State Bank, to wit:

Three notes of thirteen hundred and twenty-one dollars and eighty-four cents each, ($1,321.84,) payable respectively on the fifteenth of October, first of November, and first of December next, (1858.)

Six notes of two thousand six hundred and forty-three dollars and sixty-seven cents each, ($2,643.67,) payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-nine.

Six notes of thirteen hundred and twenty-one dollars and eighty-four cents each, payable respectively on the first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-nine.

Six notes of two thousand six hundred and forty-three dollars and sixty-seven cents, each payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and sixty.

Six notes of thirteen hundred and twenty-one dollars and eighty-four cents each, payable respectively on the first of July, August, September, October, November, and December, eighteen hundred and sixty.

Six notes of two thousand six hundred and forty-three dollars and sixty-seven cents, each payable respectively on the first day of January, February, March, April, May, and June, eighteen hundred and sixty-one.

Six notes of thirteen hundred and twenty-one dollars and eighty-four cents, payable respectively on the first day of July, August, September, October, November, and December, eighteen hundred and sixty-one.

Six notes of two thousand six hundred and forty-three dollars and sixty-seven cents each, payable respectively on the first day of January, February, March, April, May, and June, eighteen hundred and sixty-two.

Six notes of thirteen hundred and twenty-one dollars and eighty-four cents each, payable respectively on the first day of July, August, September, October, November, and December, eighteen hundred and sixty-two.

Five notes of two thousand six hundred and forty-three dollars and sixty-seven cents each, payable respectively on the first day of January, February, March, April, and May, eighteen hundred and sixty-three.

And lastly, one note of two thousand six hundred and forty-three dollars and eighty-nine cents, payable on the first of June, eighteen hundred and sixty-three.

Which notes being signed ne varietur by the undersigned notary, to identify them herewith, were handed to the said Gerard Stith, mayor, who acknowledges the delivery thereof.

And now personally intervenes in these presents:

Messrs. William Nichols Batson and Charles Austin Eager, both of this city, who, having read what is above written, declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by the said John Baker, and bind themselves, jointly and in solido, in favor of the city of New Orleans, in the sum of twenty-eight thousand seven hundred and fifty dollars, payable, on demand, to said corporation.

Now, the condition of the above bond or obligation is such that if the said John Baker shall well, truly, and faithfully perform and execute the present contract, then the said bond to be null and void, but otherwise to remain in full force and virtue, the said W. N. Batson and C. A. Eager hereby waiving the benefit of division and discussion granted by law to securities.

Done and passed in my office the month, day, and year first above written, in the presence Paul E. Théard and Oscar LeBlanc, competent witnesses, who have hereunto signed their names with the said parties and me, notary, after due reading of the foregoing.

Original signed:

JOHN BAKER.
W. N. BATSON.
C. A. EAGER.
GERARD STITH, *Mayor.*

Correct:

J. J. MICHEL, *City Attorney.*
OSCAR LEBLANC.
PAUL E. THEARD.
E. BOUNY, *Not. Pub.*

A true copy.
New Orleans, November 4, 1871.
(Signed) E. BOUNY, *Not Pub.*

61 DOCUMENT LL³.—FILED NOVEMBER 16, 1871.

Lease of wharves to E. A. Patterson.

STATE OF LOUISIANA,
City of New Orleans:

Be it known, that on this thirty-first day of August, in the year of our Lord one thousand eight hundred and fifty-eight, and the eighty-third of *of* the Independence of the United States of America, before me, Eusebe Bouny, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the honorable Gerard Stith, mayor of the city of New Orleans, and herein acting in that capacity, and Mr. Ebenezer Anguis Patterson, also of this city, and the said Gerard Stith, mayor as aforesaid, declared, that by virtue of the authority in him vested by resolution No. 4137, passed by the

common council of the city of New Orleans, and approved on the nineteenth instant, a copy of which resolution is hereto annexed for reference, and in confirmation of the sale and adjudication made by the city comptroller on the sixteenth instant, as will appear by reference to the proces verbal hereto annexed, he does, by these presents, grant, bargain, sell, and confirm unto the said E. A. Patterson, the revenues of all the wharves and landings of this city, lying and being upon the Mississippi River, and contained within the lower line of North Market street, including wharf No. 15 and the upper line of that part of the river-front of the city which is appropriated to the Canal street ferry; said revenues being collectable under existing ordinances, upon all ships, vessels, steamships, steamboats, flat-boats, and water-crafts of any and every description whatsoever, for the term of four years and nine months, commencing on the first day of October, eighteen hundred and fifty-eight, and ending on the thirtieth of June, eighteen hundred and sixty-three.

And for the purposes contemplated, the said Gerard Stith, in his said capacity of mayor, does hereby subrogate the said E. A. Patterson to all the rights and privileges of the city of New Orleans, to sue for and collect said revenues.

And the contracting parties do hereby mutually agree, stipulate, and contract—

That the said E. A. Patterson shall not sell, transfer, assign, set over, subrogate or sublease his right, title, and interest in the revenues of the aforesaid section, to any person or persons whatsoever; and in case of any sale, transfer, assignment, subrogation, or sublease made by any person or persons, of the rights and interests acquired under and by virtue of this contract, such sale, transfer, assignment, subrogation, or sublease shall work a forfeiture of said rights and interests so acquired as aforesaid, and the same shall revert to the city of New Orleans.

That the city of New Orleans reserves to herself and excepts from said sale, each and every landing and ferry-wharf now existing, and each and every nuisance-wharf now existing, and all the revenues arising from the same.

That the said purchaser or lessee shall accept and take possession of the wharves, landings, and levees contained within the section adjudicated to him, in the condition in which the same may be on the
62 first day of October next, (1858;) and the said purchaser and lessee so accepting and taking possession of the said wharves, landings, and levees shall repair the same and keep the same in good order and condition during the whole term of four years and nine months, commencing with the first day of October, 1858, and ending with the thirtieth of June, 1863; and that the lessee shall have no right to build any shed, warehouse, or platform on the said wharves without the permission of the common council.

That the levees named in the foregoing paragraph shall extend back to the line of Front street, from North Market to Canal street, including that portion in the rear of wharf No. 15; and it is hereby well understood that the city claims and reserves to herself the right to appropriate, sell, lease, use, or in any manner dispose (as may be deemed expedient by the common council) of any portion of the levees comprised within said section, whenever any of said levee' shall become, in the opinion of the common council, unproductive, inoperative, or useless to and for the great purposes of commerce or public use.

That the repairs of the levees required to be made by the said purchaser or lessee as aforesaid shall consist in grading the same according

to the grades already established, in covering the same with hard substances, such as lake or oyster shells and gravel; in keeping the same always in good order by filling up all holes on their first appearance with hard substance as above mentioned; and filling up with river sand all parts of the same which may cave or sink below the grades aforesaid; and in keeping the bulk-heads on the outside of the same always in good order and condition; and whenever the batture shall form so as to require the levee to be extended, the lessee shall, on the order of the common council, fill up such parts of the batture, and build such levees as said common council may deem it necessary, as well as all new bulk-heads.

That the repairs of wharves to be made by the purchaser or lessee under this contract, shall consist in repairing all holes in the flooring of the wharves and incline planes immediately upon their first appearance; in raising all portions of the wharves which may have sunk below the levels now established; in taking out and renewing all caps and stringers, piles, fender-piles, flooring, etc., which may be found rotten or decayed, in building anew all wharves which, from general decay, may require the same; and extending into the river all wharves which may require extension, so as to have at all times a depth of water of twenty feet at the water line of each and every wharf, and for the landing and discharge of ships, and depth of water of ten feet at the water line of each and every wharf used for the landing and discharge of steamboats.

That, in making the repairs aforesaid, the piles used shall be of lake or river timber of the best quality, eleven by eleven inches square at one end, and nine by nine inches square at the other; and shall be driven from fifteen to twenty feet into the solid ground, at distances of ten feet from the centers; the heads of the piles shall be squared according to the levels to be given by the city surveyor; and shall receive and support eleven by eleven inches square caps, which shall be strongly fastened to each of the said piles with drag nails one inch square by eighteen inches long; the stringers used shall be at least ten inches square; shall rest at right angles upon the caps, at distances of five feet from the centers, and shall be strongly fastened at each intersection with a cap with drag nails one inch square by sixteen inches long; the planks used for the flooring shall be of yellow pine of the best quality, twelve inches wide, not less than three inches thick, and not less than fifteen feet long; they shall be strongly nailed to each of the stringers with seven-inch pressed spikes, two at each end of each plank, and one at each intersection of the stringers.

63 That each and every wharf used for the landing and discharge of steamboats shall have an incline plane projecting from the foot thereof, of at least thirty feet in width; that on the outside of said incline plane, and adjoining the last row of piles thereof, there shall be driven a row of piles which shall receive a cap eleven by eleven inches square, with nine-inch tennons and mortices, and on the top of said cap shall rest a fender-cap twelve inches square, which shall be fastened to the two other caps at a distance of five feet, with seven bolts of one and one-half inches in diameter, and of suitable length; that the four rows of pile of each incline plane shall be braced every ten feet, with ten by ten inch braces, which shall be fastened to each pile with seven bolts of one inch diameter and of suitable length; and that the lessee, in taking possession of said wharves, shall repair and keep in good order and condition, during the whole term of this lease, such incline planes as aforesaid as do now exist connected with the wharf or wharves so accepted and taken possession of; and in case there shall

be no incline plane as above required, at the time of taking possession of said wharves, then said lessee shall cause said incline planes to be built at his expense, and shall keep the same in repairs during the whole term of this lease.

That each and every wharf used for the landing and discharge of steamships, fenders shall be driven at equal distances of twenty feet; and each fender shall be composed of four piles, eleven by eleven inches square, strongly fastened together, and to the wharves, with at least six screw-bolts of one and a half inches in diameter; that the four outside rows of piles of each and every wharf used for the landing and discharge of steamships and of ships shall be braced every ten feet by ten-inch braces, which shall be fastened to each of said piles with seven bolts of one inch in diameter; and that said lessee, in accepting and taking possession of said wharves, shall repair and keep in good order and condition during the whole of said term of four years and nine months (the length of this lease) such fenders and braces as do now exist, connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no fenders and braces as above required at the time of accepting and taking possession of the same, said lessee shall cause said fenders to be driven and said braces to be made at his cost, and shall keep the same in good order and repair during the whole term of this lease.

That on all the wharves accepted and taken possession of by the said E. A. Patterson, lessee, mooring-piles twelve inches square shall be drawn as follows, to wit: On the steamboat wharf, simple piles along the incline planes at distances of forty feet from the centers; on the steamships and ships' wharves, double piles whensoever the harbor-master may direct; that each of the aforesaid mooring-piles shall be strongly fastened to the piles of the wharves with at least two screw-bolts of one inch in diameter, and shall project three and a half feet above the flooring of the wharves; and said lessee, in accepting and taking possession of said wharves, shall repair and keep in good order and condition, during the whole of said term of four years and nine months, such mooring-piles as do now exist, connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no mooring-piles as above required at the time of accepting and taking possession of said wharves, said lessee shall cause said mooring-piles to be driven and fastened at his cost; and shall keep the same in good order and repair and condition, during the whole of said term of four years and nine months.

That said lessee shall be bound, whenever ordered by the common council, to build all additional new wharves that may be necessary.

64 That all works and repairs to be done by this contract shall be done under the supervision of the surveyor and chairman of the committee of streets and landings of the boards of common council; and in case of refusal on the part of said lessee to make all said works and repairs, it shall be the duty of the surveyor to have them made forthwith, at the expense of said lessee.

That all works and repairs required to be done by the contract shall be done by said E. A. Patterson, lessee, after fifteen days' notice thereof is given by the surveyor.

That it is well understood, that in case of neglect or failure by said E. A. Patterson, lessee, to commence or finish the work during the term mentioned in the orders of the surveyor, the common council shall have the right to annul this lease without putting the lessee in default, as required by article 1905 of the civil code, and without applying to a court

of justice to annul the same, and without indemnity to such lessee; and it is also well understood, that in case said lessee shall fail to make, or shall abandon the repairs, the said lessee shall forfeit all notes he may have furnished to the city; and that the common council shall have the right to resell the revenues of said section to account and risk of said defaulting lessee and his securities.

That the common council may revoke, set aside and annul this contract, whenever the said lessee shall neglect or fail to pay at maturity any note given in part payment of the purchase-price of the aforesaid revenues, and thereupon the city may take immediate possession of the wharves, landings and levees contained in the section herein sold, and proceed to collect the revenues collectable within the same, or resell such section for the account and risk of said E. A. Patterson, as the council may deem proper.

That said lessee shall be furnished by the surveyor, with an inventory of all spars, timbers, stage-planks, etc., used for mooring vessels and for staging for vessels, and shall give to the surveyor a receipt for the same; and shall at all times keep on hand for the use of vessels, a sufficient supply of the same; and shall return to the city at the end of this lease an inventory of equal amount and value of the same.

That the said lessee and his securities shall, in solido, for all damages which may be claimed of the city, by any party or parties who may sustain injury or damage in consequence of neglect of the said lessee to comply with the requirements of this contract.

That all the aforesaid wharves, landings and levees shall continue subject to the police regulations now governing the same, and under existing ordinances, and no change shall be made without the consent of both parties; that all ships and other water-craft shall pay the dues collectable under existing ordinances, to the aforesaid lessee in his section; and that, in case of removal of any ship or water-craft from one section to another, the dues so collectable shall be divided pro rata between the lessees in which section said ships or water-craft may have been, according to the number of days the ship and water-craft may lie and be within the several sections.

That all that extent of the part of the third section comprised within North Market street and the lower line of Julia street, and including wharf No. 15, be and is hereby appropriated as a landing for steamships; and that all the remainder of the port of said section comprised within the lower line of Julia street and Canal street be and is appropriated for a landing for steamboats.

And in order to come to a better and full understanding, the con-
65 tracting parties do further agree to carry out and execute in good faith this contract, to all its extents and purposes, according to the terms, conditions and specifications contained in ordinance 4007 of the common council, entitled "An ordinance concerning the wharves of the city of New Orleans, and providing for the farming of the revenues thereof," and approved on the 21st of June last, as well as if said ordinance was extended at length in the body of this act, a copy of the same being hereto annexed, and signed, ne varietur, by the contracting parties, the undersigned witnesses and notary, in order to be identified herewith.

This privilege is granted to the said E. A. Patterson, for and in consideration of the price and sum of two hundred and eighty-nine thousand dollars, ($289,000,) in payment of which the said E. A. Patterson has furnished fifty-seven notes dated this day, drawn by him to the or-

der of, and endorsed by Isaac G. Seymour and Thomas Murray and John Culbertson, and payable at the Louisiana State Bank, to wit:

Twenty-seven notes of three thousand three hundred and twenty-one dollars and eighty-four cents ($3,321.84) each, and payable respectively on the following days, viz:

Fifteenth October, 1858.
First November, 1858.
First December, 1858.
First July, 1859.
First August, 1859.
First September, 1859.
First October, 1859.
First November, 1859.
First December, 1859.
First July, 1860.
First August, 1860.
First September, 1860.
First October, 1860.
First November, 1860.
First December, 1860.
First July, 1861.
First August, 1861.
First September, 1861.
First October, 1861.
First November, 1861.
First December, 1861.
First July, 1862.
First August, 1862.
First September, 1862.
First October, 1862.
First November, 1862.
First December, 1862.

Twenty-nine notes of six thousand six hundred and forty-three dollars and sixty-seven cents ($6,643.67) each, and payable respectively on the following days, viz:

First January, 1859.
First February, 1859.
First March, 1859.
First April, 1859.
First May, 1859.
First June, 1859.
First January, 1860.
First February, 1860.
First March, 1860.
66 First April, 1860.
First May, 1860.
First June, 1860.
First January, 1861.
First February, 1861.
First March, 1861.
First April, 1861.
First May, 1861.
First June, 1861.
First January, 1862.
First February, 1862.

First March, 1862.
First April, 1862.
First May, 1862.
First June, 1862.
First January, 1863.
First February, 1863.
Frst March, 1863.
First April, 1863.
First May, 1863.

And lastly, one note of six thousand six hundred and forty-three dollars and eighty-nine cents, ($6,643.89,) payable on the first day of June, eighteen hundred and sixty-three.

Which notes being signed, ne varietur, by the undersigned notary, to identify them herewith, were handed to the said Gerard Stith, mayor, who acknowledges the delivery thereof.

And now personally came and intervened in these presents:

Thomas Murray, Isaac G. Seymour, John Culbertson, all of this city.

Who, having read what is above written, declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract of lease by the said E. A. Patterson, and bind themselves, jointly and in solido, in favor of the city of New Orleans, in the sum of seventy-two thousand two hundred and fifty dollars, payable on demand to said corporation.

Now, the condition of the above-written bond or obligation is such, that if the said E. A. Patterson shall well, truly, and faithfully perform and execute the present contract in accordance with the terms thereof, then the said bond to be null and void, but otherwise to be and remain in full force and virtue; the said George May, Thomas Murray, and John Culbertson and Isaac G. Seymour hereby waiving the benefit of division and discussion granted by law to sureties.

Done and passed in my office in New Orleans, the day, month and year first above written, in presence of Paul E. Théard and Oscar LeBlanc, witnesses, who have hereunto signed their names with the appraisers and me, notary, after due reading of the foregoing.

(Original signed)

E. A. PATTERSON,
THOMAS MURRAY,
ISAAC G. SEYMOUR,
JOHN CULBERTSON,
GERARD STITH, *Mayor.*

Correct:

J. J. MICHEL, *City Attorney.*
PAUL E. THEARD,
OSCAR LEBLANC,
E. BOUNY, *Notary Public.*

A true copy:
New Orleans, Nov. 4th, 1871.

E. BOUNY, *Notary Public.*

67 DOCUMENT LL⁴.—FILED NOVEMBER 16, 1871.

Lease of wharves to Thomas A. Stone.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this thirty-first day of August, in the year of our Lord one thousand eight hundred and fifty-eight, and the eighty-

third of the Independence of the United States of America, before me, Eusebe Bouny, notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the honorable Gerard Stith, mayor of the city of New Orleans, herein acting in that capacity; and Mr. Thomas A. Stone, also of this city.

And the said Gerard Stith, mayor as aforesaid, declared that, by virtue of the authority in him vested by resolution No. 4137, passed by the common council of the city of New Orleans, and approved on the nineteenth instant, a copy of which resolution is hereto annexed for reference, and in confirmation of the sale and adjudication made by the city comptroller, on the sixteenth instant, as it will appear by reference to the process-verbal hereto annexed, he does by these presents grant, bargain, sell, and confirm unto said Thomas A. Stone the revenues of all the wharves and landings of this city lying and being upon the Mississippi River and contained within the lower line of that portion of the river-front of said city which is appropriated to the Canal-street ferry, and the upper line of Jefferson street, except that space between the lower line of Toulouse street and the upper line of Jefferson street, which is hereby appropriated and reserved for the use of the Opelousas and Great Western Railroad Company for a ferry-landing provided that said company shall, within ninety days after notification of the city surveyor, construct at their own expense the necessary wharves and ships for the landing of their said ferry, and comprised within the aforesaid space, and provided further, that said company shall, at their own expense, keep in full and complete repair the said wharves and ships, and the levee comprised within said limit, and up to the curb of Old Levee street; the said wharves and ships to be completed and kept in repair under the supervision of the city surveyor; and provided further, that all freight landed within said limit shall be subject to the ordinances and regulations relative thereto, and to the provision of the ordinance; and provided further, that the common council shall at any time have the right of revoking the privileges herein granted, and of changing and removing said ferry-landings; said revenues being collectable, under existing ordinances, upon all ships, vessels, steamships, steamboats, flat-boats, and water-crafts of any and every description whatsoever, for the term of four years and nine months, commencing on the first day of October, eighteen hundred and fifty-eight, and ending with the thirtieth of June, eighteen hundred and sixty-three, (1863;) and for the purposes contemplated, the said Gerard Stith, in his said capacity of mayor, does hereby subrogate the said Thomas A. Stone to all the rights and privileges of the city of New Orleans, to sue for and collect said revenues; and the contracting parties do hereby mutually agree, stipulate, and covenant—

That the said Thomas A. Stone shall not sell, transfer, assign, set over, subrogate or sublease his right, title, and interest in the
68 revenues of said section to any person or persons whatsoever; and in case of any sale, transfer, assignment, subrogation or sublease, made to any person or persons, of the rights and interests acquired under and by virtue of this contract, such sale, transfer, assignment, subrogation or sublease shall work a forfeiture of said rights and interests so acquired as aforesaid, and the same shall revert to the city of New Orleans.

That the city of New Orleans reserves to herself, and excepts from said sale, each and every landing and ferry wharf now existing, and

each and every nuisance wharf now existing, and all the revenues arising from the same.

The common council also reserves from adjudication and sale that portion of the wharves of the fourth section, between the lower line of Toulouse street and the upper line of Jefferson street, the same being appropriated and reserved to the use of the New Orleans, Opelousas and Great Western Railroad Company, for a ferry landing.

That the said purchaser or lessee shall accept and take possession of the wharves, landings, and levees, contained within the section adjudicated to him, in the condition in which the same may be on the first day of October next, (1858.)

And the said purchaser or lessee, so accepting and taking possession of the said wharves, landings, and levees, shall repair the same, and keep the same in good order and condition during the whole term of four years and nine months, commencing with the first day of October, 1858, and ending with the 30th June, 1863, provided the lessee shall have no right to build any sheds, warehouses, or platforms on the said wharves without the permission of the common council.

That the levees named in the foregoing paragraph shall extend back to the line of Front street from Canal to Custom-house streets, and to New Levee street from Custom-house to Toulouse street; and it is hereby well understood that the city claims and reserves to herself the right to appropriate, sell, lease, and use, or in any manner dispose (as may be deemed expedient by the common council) of any portion of the levees comprised within said section, whenever any of said levees shall become, in the opinion of the common council, unproductive, inoperative or useless to and for the great purposes of commerce or public use.

That the repair of the levees required to be made by the said purchaser or lessee as aforesaid, shall consist in grading the same according to the grades already established, in covering the same with hard substances such as lake and oyster shells or gravel; in keeping the same in good order by filling up all holes on their first appearance with hard substances as above mentioned; in filling up with river sand all parts of the same which may cave or sink below the grades as aforesaid; and in keeping the bulkheads on the outside of the same always in good order and condition; and whenever the batture shall form so as to require the levee to be extended, the lessee shall, on the order of the common council, fill up such parts of the batture, and build such levees as said common council may deem necessary, as well as all new bulkheads; the repairs of the wharves to be made by the purchaser or lessee under this contract shall consist n repairing all holes in the flooring of said wharves and inclined planes immediately upon their first appearance; in raising all portions of the wharves which may have sunk, or which may sink below the levels now established; in taking out and renewing all caps and stringers, piles, fender-piles, flooring, etc., which may be found rotten or decayed; in building anew all wharves which, from general decay, may require the same; and extending into the river all wharves which may require extension, so as to have at all times
69 a depth of water of ten feet at the water-line of each and every wharf used for the landing and discharge of steamboats; that in making the repairs aforesaid, the piles used shall be of lake or river timber of the best quality, eleven by eleven inches square at one end, and nine by nine inches square at the other end, and shall be driven from fifteen to twenty feet into the solid ground at distances of ten feet from the centers; the heads of the piles shall be squared according to the levels to be given by the city surveyor, and shall receive and sup-

port eleven by eleven inches square caps, which shall be strongly fastened to each of the said piles with drag nails one inch square by eighteen inches long; the stringers used shall be at least ten inches square, shall rest at right angles upon the caps at distances of five feet from the centers, and shall be strongly fastened to each intersection with a cap with drag nails one inch square by sixteen inches long; the plank used for the flooring shall be of yellow pine of the best quality, twelve inches wide, not less than three inches thick, and not less than fifteen feet long; they shall be strongly nailed to each of the stringers with seven-inch pressed spikes, two at each end of each plank, and one at each intersection of the stringers.

That each and every wharf used for the landing and discharge of steamboats shall have an inclined plane projecting from the foot thereof, of at least thirty feet in width; that on the outside of said inclined plane, and adjoining the last row of piles thereof, there shall be driven a row of piles which shall receive a cap of eleven by eleven inches square with nine-inch tenons and mortices, and on the top of said cap shall rest a fender-cap twelve inches square, which shall be fastened to the two other caps, at a distance of five feet, with screw-bolts of one and one-half inches in diameter, and of suitable length; that the four rows of piles of each inclined plane shall be braced every ten feet with ten by ten inch braces, which shall be fastened to each pile with screw-bolts of one inch diameter and of suitable length; and that the said lessee accepting and taking possession of said wharves in accordance with the above contract, shall repair and keep in good order and condition, during the whole of said term of four years and nine months, such inclined planes aforesaid as do now exist connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no inclined planes as above required at the time of accepting and taking possession of said wharf or wharves as aforesaid, then, that the purchaser or lessee so accepting and taking possession of the same shall cause said inclined planes to be built at his own expense, and shall keep the same in repair, as aforesaid, during the whole of said term of four years and nine months.

That on all the wharves accepted and taken possession of by the said Thomas A. Stone, lessee, mooring-piles twelve inches square shall be driven as follows, to wit: on the steamboat wharves, single piles along the inclined planes, at distances of forty feet from the centers.

That each of the aforesaid mooring-piles shall be strongly fastened to the piles of the wharves with at least two screw-bolts of one inch in diameter, and shall project three and a half feet above the flooring of the wharves; and said lessee, in accepting and taking possession of said wharves, shall repair and keep in good order and condition, during the whole of said term of four years and nine months, such mooring-piles as do now exist connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no mooring-piles, as above required, at the time of accepting and taking possession of said wharf or wharves as aforesaid, the said lessee shall cause the said mooring-piles to be driven and fastened at his cost, and shall keep the same in good order and repair and condition during the whole of said term of four years and nine months.

70 That said Thomas A. Stone shall be bound, whenever ordered by the common council, to build all additional new wharves that may be necessary.

That all works and repairs to be done by this contract shall be done under the supervision of the surveyor and chairmen of the committees

on streets and landings of the two boards of the common council, and in case of refusal on the part of said lessee to make all said works and repairs, it shall be the duty of the surveyor to have them made forthwith, at the expense of the said lessee.

That all works and repairs to be done by the said Thomas A. Stone, lessee, after fifteen days' notice thereof is given by the said surveyor.

That it is well understood that, in case of neglect or failure by said Thomas A. Stone, lessee, to commence or finish the work during the time mentioned in the orders of the surveyor, the common council shall have the right to annul this lease without putting the lessee in default, as required by Article 1905 of the Civil Code, and without applying to a court of justice to annul the same, and without indemnity to the said lessee; and it is also well understood, that in case said lessee shall fail to make or shall abandon the repairs, the said lessee shall forfeit all notes he may have furnished to the city, and that the common council shall have the right to resell the revenues of said section for account and risk of said defaulting lessee and his securities; that the common council may revoke, set aside, and annul this contract, whenever the said lessee shall neglect or fail to pay, at maturity, any note given in part payment of the purchase price of the aforesaid revenues, and thereupon the city may take immediate possession of the wharves, landings, and levees contained in the section herein sold, and proceed to collect the revenues collectable within the same, or resell such section for account and risk of said Thomas A. Stone, as the council may deem proper.

That said lessee shall be furnished by the surveyor with an inventory of all spars, timbers, stage-planks, etc., used for mooring vessels and for staging vessels, and shall give to the surveyor a receipt for the same, and shall at all times keep on hand for the use of vessels a sufficient supply of the same; and shall return to the city, at the end of this lease, an inventory of equal amount and value of the same; that the said lessee and his surety shall, in solido, be responsible for all damages which may be claimed of the city by any party or parties who may sustain injury or damage in consequence of the neglect of the said lessee to comply with the requirements of this contract.

That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations now governing the same and under existing ordinances, and no change shall be made without the consent of both parties; that all steamboats and other water-crafts shall pay the dues collectable under existing ordinances, to the aforesaid lessee, in his section, and that in case of removal of any ship or water-craft from one section to another, the dues so collectable shall be divided pro rata between the lessees of the section in which said ship or water-craft may lie, according to the number of days said ship or water-craft lie and be within the several sections.

That the whole of the port of the fourth section be, and is hereby, appropriated as a landing for steamboats.

And in order to come to a better and full understanding, the contracting parties do further agree to carry out and execute in good faith this contract to all its intents and purposes, according to the terms, conditions, and specifications contained in ordinance 4007 of the common council, entitled "An ordinance concerning the wharves of the
71 city of New Orleans, and providing for farming the revenues thereof," and approved on the twenty-first of June last, as well as if said ordinance was extended at length in the body of this act, a copy of the same being hereto annexed and signed, ne varietur, by the

contracting parties, the undersigned witnesses and notary, in order to be identified therewith.

The privileges granted to the said Thomas A. Stone for and in consideration of the price and sum of one hundred and twenty-two thousand dollars, in payment of which the said Thomas A. Stone has furnished fifty-seven notes dated this day, drawn by him to the order of and endorsed by Mr. H. H. Stanley, and payable at the Louisiana State Bank, to wit:

Twenty-seven notes of one thousand four hundred and two dollars and thirty cents each ($1,402.30,) and payable respectively on the following days, viz:

Fifteenth October, 1858.
First November, 1858.
First December, 1858.
First July, 1859.
First August, 1859.
First September, 1859.
First October, 1859.
First November, 1859.
First December, 1859.
First July, 1860.
First August, 1860.
First September, 1860.
First October, 1860.
First November, 1860.
First December, 1860.
First July, 1861.
First August, 1861.
First September, 1861.
First October, 1861.
First November, 1861.
First December, 1861.
First July, 1862.
First August, 1862.
First September, 1862.
First October, 1862.
First November, 1862.
First December, 1862.

Twenty-nine notes of two thousand eight hundred and four dollars and fifty-nine cents, each ($2,804.59,) and payable respectively on the following days, viz:

First January, 1859.
First February, 1859.
First March, 1859.
First April, 1859.
First May, 1859.
First June, 1859.
First January, 1860.
First February, 1860.
First March, 1860.
First April, 1860.
First May, 1860.
72 First June, 1860.
First January, 1861.
First February, 1861.

First March, 1861.
First April, 1861.
First May, 1861.
First June, 1861.
First January, 1862.
First February, 1862.
First March, 1862.
First April, 1862.
First May, 1862.
First June, 1862.
First January, 1863.
First February, 1863.
First March, 1863.
First April, 1863.
First May, 1863.

. And lastly, one note of two thousand eight hundred and four dollars and seventy-nine cents, ($2,804.79,) payable on the first day of June, eighteen hundred and sixty-three; which notes being signed, ne varietur, by the undersigned notary, to identify them herewith, were handed to the said Gerard Stith, mayor, who accepted the receipt thereof.

And now personally intervened in these presents:

Mr. Henry Hope Stanley, of this city, who, having read what is above written, declared that he hereby guarantees to the city of New Orleans the faithful performance of the foregoing contract of lease by the said Thomas A. Stone, and binds himself jointly and in solido in favor of the city of New Orleans, in the sum of thirty thousand five hundred dollars ($30,500,) payable on demand to said corporation.

Now, the condition of the above-written bond or obligation is such, that if the said Thomas A. Stone shall well, truly, and faithfully perform and execute the present contract in accordance with the terms thereof, then the said bond to be null and void; but otherwise to be and remain in full force and virtue.

The said H. H. Stanley hereby waiving the benefit of division and discussion granted by law to sureties.

Done and passed, in my office in New Orleans, the day, month, and year first above written, in presence of Paul Emile Theard and Oscar LeBlanc, competent witnesses, who have hereunto signed their names with the parties and me, notary, after due reading of the foregoing.

(Original signed) THOMAS A. STONE.
H. H. STANLEY.
GERARD STITH, *Mayor.*

Correct:

J. J. MICHEL, *City Attorney.*
PAUL E. THEARD.
OSCAR LEBLANC.
E. BOUNY, *Notary Public.*

A true copy:
New Orleans, November, 4, 1871.

E. BOUNY,
Notary Public.

73 DOCUMENT LL[5].—FILED NOVEMBER 16, 1871.

Lease of wharves to John Baker.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this thirty-first day of August, in the year of

our Lord one thousand eight hundred and fifty-eight, and the eighty-third of the Independence of the United States of America, before me, Eusebe Bouny, a notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the honorable Gerard Stith, mayor of the city of New Orleans, and herein acting in that capacity, and Mr. John Baker, also of this city.

And the said Gerard Stith, mayor as aforesaid, declared that, by virtue of the authority in him vested by resolution No. 4137, passed by the common council of the city of New Orleans, and approved on the nineteenth instant, a copy of which resolution is hereto annexed for reference, and in confirmation of the sale and adjudication made by the city comptroller on the sixteenth instant, as will appear by reference to the process-verbal hereto annexed, he does, by these presents, grant, bargain, sell, and confirm unto the said John Baker the revenues of all the wharves and landings of this city, lying and being upon the Mississippi River, and contained within the upper line of Jefferson street and the upper line of that portion of the river-front of said city which is appropriated to the Esplanade-street ferry; and excepting therefrom that portion of the river-front which is or may hereafter be appropriated for a ferry, to an extent of not more than one hundred and fifty feet at the foot of St. Ann street; said revenues being collectable under existing ordinances upon all ships, vessels, steamships, steamboats, flat-boats, and water-crafts of any and every description whatsoever, for the term of four years and nine months, commencing on the first day of October, eighteen hundred and fifty-eight, and ending on the thirtieth of June, eighteen hundred and sixty-three.

And for the purposes contemplated, the said Gerard Stith, in his said capacity of mayor, does hereby subrogate the said E. A. Patterson to all the rights and privileges of the city of New Orleans, to sue for and collect said revenues.

And the said contracting parties do hereby mutually agree, stipulate and covenant—

That the said John Baker shall not sell, transfer, assign, set over, subrogate, or sub-lease his right, title, and interest in the revenues of the said section to any person or persons whatsoever; and in case of any sale, transfer, assignment, subrogation, or sublease, made by any person or persons, of the rights or interests acquired under and by virtue of this contract, such sale, transfer, assignment, subrogation, or sublease shall work a forfeiture of said rights and interests so acquired as aforesaid, and the same shall revert to the city of New Orleans.

That the city of New Orleans reserves to herself and excepts from said sale each and every landing and ferry wharf now existing, and each and every nuisance wharf now existing, and all the revenues arising from the same.

That the said purchaser or lessee shall accept and take possession of the wharves, landings, and levees contained within the section
74 adjudicated to him, in the condition in which the same may be on the first day of October next, (1858;) and the said purchaser and lessee so accepting and taking possession of the said wharves, landings, and levees, shall repair the same and keep the same in good order and condition during the whole term of four years and nine months, commencing with the first day of October, 1858, and ending with the thirtieth of June, 1863; provided that the lessee shall have no right to build any shed, warehouse, or platform on the said wharves without the permission of the common council.

That the levees named in the foregoing paragraph shall extend back to the line of street or streets fronting the river; that is to say, the levee comprised within the section herein sold shall extend back to the line of Old Levee street; and it is hereby well understood that the city claims and reserves to herself the right to appropriate, sell, lease, use, or in any manner dispose, as may be deemed expedient by the common council, of any portion of the levees comprised within said section, whenever any of said levee shall become, in the opinion of the common council, unproductive, inoperative, or useless to and for the great purposes of commerce or public use.

That the repairs of the levees required to be made by the said purchaser or lessee as aforesaid shall consist in grading the same according to the grades already established, in covering the same with hard substances, such as lake or oyster shells and gravel; in keeping the same always in good order, by filling up all holes on their first appearance with hard substances, as above mentioned; and filling up with river-sand all parts of the same which may cave or sink below the grades aforesaid; and in keeping the bulkheads on the outside of the same always in good order and condition; and whenever the batture shall form so to require the levee to be extended, the lessee shall, on the order of the common council, fill up such parts of the batture, and build such levees as said common council may deem necessary, as well as all new bulkheads.

That the repairs of wharves to be made by the purchaser or lessee under this contract shall consist in repairing all holes in the flooring of the wharves and incline' planes immediately upon their first appearance; in raising all portions of the wharves which may have sunk below the levels now established; in taking out and renewing all caps and stringers, piles, fender-piles, flooring, etc., which may be found rotten or decayed; in building anew all wharves which, from general decay, may require the same; and extending into the river all wharves which may require extension, so as to have at all times a depth of water of twenty feet at the water-line of each and every wharf used for the landing and discharge of ships.

That, in making the repairs aforesaid, the piles used shall be of lake or river timber, of the best quality, eleven by eleven inches square at one end, and nine by nine inches square at the other, and shall be driven from fifteen to twenty feet into the solid ground, at distances of ten feet from the centers; the heads of the piles shall be squared according to the levels to be given by the city surveyor; and shall receive and support eleven by eleven inches square caps, which shall be strongly fastened to each of the said piles with drag-nails one inch square by eighteen inches long; the stringers used shall be at least ten inches square; shall rest at right angles upon the caps, at distances of five feet from the centers, and shall be strongly fastened at each intersection with a cap with drag-nails one inch square by sixteen inches long; the planks used for the flooring shall be of yellow pine of the best quality, twelve inches wide, not less than three inches thick, and not less than fifteen feet long; they shall be strongly nailed to each of the stringers, with seven-inch pressed spikes, two at each end of each plank, and one at each intersection of the stringers.

75 That at each and every wharf used for the landing and discharge of ships, a row of fender piles shall be driven, each pile ten feet apart and fastened in a strong manner to the piles of the wharves with at least two screw-bolts of one and a half inches in diameter; that on the front of said wharves two fender-caps shall be placed, one on a

level with the flooring of the wharf, and the other at five feet above low-water mark; said fender shall be twelve by twelve inches square, and to be fastened to the piles of the wharf with seven bolts one and a half feet in diameter; and that said lessee, in taking possession of said wharves, shall repair and keep in good order and condition, during the whole term of this lease, such fender-piles and fender-caps as do now exist connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no fender-caps as above required, at the time of accepting and taking possession of said wharves, then said lessee shall cause said fender-piles and fender-caps to be driven and placed as above required, at his own cost; and shall keep the same in repair during the whole of said term of four years and nine months.

That on all the wharves accepted and taken possession of by the said John Baker, lessee, mooring-piles, twelve inches square, shall be driven as follows, to wit: On the said ship-wharves, double piles wherever the harbor-master may direct; that each of the aforesaid mooring-piles shall be strongly fastened to the piles of the wharves withat least ten screw-bolts of one inch in diameter, and shall project three and a half feet above the flooring of the wharves; and said lessee, in accepting and taking possession of said wharves, shall repair and keep in good order and condition, during the whole of said term of four years and nine months, such mooring-piles as do now exist, connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no mooring-piles as above required at the time of accepting and taken possession of said wharves, said lessee shall cause said mooring-piles to be driven and fastened at his cost; and shall keep the same in good order and repair and condition, during the whole of said term of four years and nine months.

That said John Baker lessee, shall be bound, whenever ordered by the common council, to build all additional new wharves that may be necessary.

That all works and repairs to be done by this contract, shall be done under the supervision of the surveyor and chairmen of the committee of streets and landings of the two boards of common council; and in case of refusal of said lessee to make all said works and repairs, it shall be the duty of the surveyor to have them made forthwith, at the expense of said lessee.

That all works and repairs required to be done by the contract, shall be done by said John Baker, lessee, after fifteen days' notice thereof is given by the surveyor.

That it is well understood that, in case of neglect or failure by said John Baker, lessee, to commence or finish the work during the term mentioned in the orders of the surveyor, the common council shall have the right to annul this lease without putting the lessee in default, as required by Article 1905 of the Civil Code, and without applying to a court of justice to annul the same, and without indemnity to such lessee; and it is also well understood, that in case said lessee shall fail to make or shall abandon the repairs, the said lessee shall forfeit all notes he may have furnished to the city; and that the common council shall have the right to resell the revenues of said section for account and risk of said defaulting lessee and his securities.

76 That the common council may revoke, set aside, and annul this contract, whenever the said lessee shall neglect or fail to pay at maturity any notes given in part payment of the purchase price of the aforesaid revenues, and thereupon the city may take immediate posses

sion of the wharves, landings, and levees contained in the section therein sold, and proceed to collect the revenues collectable within the same, or resell such section for the account and risk of said John Baker, as the council may deem proper.

That said lessee shall be furnished by the surveyor with an inventory of all spars, timbers, stage-planks, etc., used for mooring vessels and for staging for vessels, and shall give to the surveyor a receipt for the same; and shall at all times keep on hand for the use of vessels a sufficient supply of the same; and shall return to the city, at the end of this lease, an inventory of equal amount and value of the same.

That the said lessee and his securities shall, in solido, be responsible for all the damages which may be claimed of the city, by any party or parties who may sustain injury or damage in consequence of the neglect of the said lessee to comply with the requirements of this contract.

That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations now regulating the same, and under existing ordinances; and no change shall be made without the consent of both parties; that all ships and other water-craft shall pay the dues collectable under existing ordinances, to the aforesaid lessee in his section; and that in case of removal of any ship or water-craft from one section to another, the dues so collectable shall be divided pro rata between the lessees in the section of which said ships or water-craft may lie, according to the number of days said ship or water-craft lie and be within the several sections.

That all that extent of the port constituting the aforesaid fifth section is hereby appropriated as a landing for the shipping, except, however, that portion of said section from the upper line of the Opelousas steamferry landing at St. Ann street, to the upper line of Jefferson street, which is hereby appropriated for schooners and other water-craft engaged in the gulf trade and for inland coasters.

And in order to come to a better and full understanding, the contracting parties do further agree to carry out and execute in good faith this contract, to all its intents and purposes, according to the terms, conditions, and specifications contained in ordinance 4007 of the common council, entitled "An ordinance concerning the wharves of the city of New Orleans, and providing for the farming of the revenues thereof," and approved on the 21st of June last, as well as if said ordinance was extended at length in the body of this act, a copy of the same being hereto annexed, and signed, ne varietur, by the contracting parties, the undersigned witnesses and notary, in order to be identified herewith.

This privilege is granted to the said John Baker, for and in consideration of the price and sum of one hundred and seventeen thousand dollars, in part payment of which the said John Baker has furnished fifty-seven notes, dated this day, drawn by him to the order of and endorsed by Mr. W. M. Batson and C. A. Eager, and payable at the Louisiana State Bank, to wit:

Twenty-seven notes of one thousand three hundred and forty-four dollars and eighty-three cents ($1,344.83) each, and payable respectively on the following days, viz:

Fifteenth October, 1858.
First November, 1858.
First December, 1858.
77 First July, 1859.
First August, 1859.

First September, 1859.
First October, 1859.
First November, 1859.
First December, 1859.
First July, 1860.
First August, 1860.
First September, 1860.
First October, 1860.
First November, 1860.
First December, 1860.
First July, 1861.
First August, 1861.
First September, 1861.
First October, 1861.
First November, 1861.
First December, 1861.
First July, 1862.
First August, 1862.
First September, 1862.
First October, 1862.
First November, 1862.
First December, 1862.

Twenty-nine notes of two thousand six hundred and eighty-nine dollars and sixty-five cents ($2,689.65) each, and payable respectively on the following days, viz:

First January, 1859.
First February, 1859.
First March, 1859.
First April, 1859.
First May, 1859.
First June, 1859.
First January, 1860.
First February, 1860.
First March, 1860.
First April, 1860.
First May, 1860.
First June, 1860.
First January, 1861.
First February, 1861.
First March, 1861.
First April, 1861.
First May, 1861.
First June, 1861.
First January, 1862.
First February, 1862.
First March, 1862.
First April, 1862.
First May, 1862.
First June, 1862.
First January, 1863.
First February, 1863.
First March, 1863.
First April, 1863.
First May, 1863.

78 And lastly, one note of two thousand six hundred and eighty-nine dollars and seven'-four cents, payable on the first day of June, eighteen hundred and sixty-three.

Which notes being signed, ne varietur, by the undersigned notary, to identify them herewith, were handed to the said Gerard Stith, mayor, who acknowledges the delivery thereof.

And now personally intervenes in these presents:

Messrs. William Nichols Batson and Charles Austin Eager, both of this city, who, having read what is above written, declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract of lease by said John Baker, and bind themselves jointly and in solido, in favor of the city of New Orleans, in the sum of twenty-nine thousand two hundred and fifty dollars payable on demand to said corporation.

Now, the condition of the above bond or obligation is such, that if the said John Baker shall well and faithfully perform and execute the present contract in accordance with the terms thereof, then the said bond to be null and void, but otherwise to remain in full force and virtue, the said W. N. Batson and C. A. Eager hereby waiving the benefit of division and discussion granted by law to securities.

Done and passed in my office, in New Orleans, the day, month, and year first above written, in presence of Paul E. Théard and Oscar LeBlanc, competent witnesses, who have hereunto signed their names with the said parties and me, notary, after due reading of the foregoing.

Original signed,

JOHN BAKER.
W. N. BATSON.
C. A. EAGER.
GERARD STITH, *Mayor.*

Correct:

J. J. MICHEL, *City Attorney.*
PAUL E. THÉARD.
OSCAR LEBLANC.
E. BOUNY, *Not. Pub.*

A true copy.
New Orleans, November 4, 1871.
(Signed) E. BOUNY, *Not. Pub.*

79 DOCUMENT LL[6].—FILED NOVEMBER 16, 1871.

Lease of wharves to John Baker.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this thirty-first day of August, in the year of our Lord one thousand eight hundred and fifty-eight, and the eighty-third of the Independence of the United States of America, before me, Eusebe Bouny, notary public in and for the parish and city of New Orleans, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the honorable Gerard Stith, mayor of the city of New Orleans, and herein acting in that capacity, and Mr. John Baker, also of this city.

And the said Gerard Stith, mayor as aforesaid, declared that by virtue of the authority in him vested by resolution No. 4137, passed by the common council of the city of New Orleans, and approved on the nineteenth instant, a copy of which resolution is hereto annexed for reference, and in confirmation of the adjudication and sale made by the city comptroller of the sixteenth instant, as it will appear by reference to the proces-verbal hereto annexed, he does, by these presents, grant,

bargain, sell, and confirm unto the said John Baker the revenues of all the wharves and landings of this city, lying and being upon the Mississippi River, and contained within the upper limit of Felicity road and the lower limit of North Market street, leaving out the whole of wharf No. 15, constituting the second section of the wharves of said city; said revenues to be collectable, under existing ordinances, upon all ships, vessels, steamships, steamboats, flat-boats, and water-crafts of any and every description whatsoever, for the term of four years and nine months, commencing on the first day of October, (1858,) eighteen hundred and fifty-eight, and ending with thirtieth June, eighteen hundred and sixty-three.

And for the purposes contemplated, the said Gerard Stith, in his said capacity as mayor, does hereby subrogate the said John Baker to all the rights and privileges of the city of New Orleans, to sue for and collect said revenues.

And the contracting parties do hereby mutually agree, stipulate, and covenant that the said John Baker shall not sell, transfer, assign, set over, subrogate, or sublease his right, title, and interest in the revenues of said section to any person or persons whatsoever; and in case of any sale, transfer, assignment, subrogation, or sublease, made by any person or persons, of the rights and interest acquired under and by virtue of this contract, such sale, transfer, assignment, subrogation, or sublease shall work a forfeiture of such rights so acquired as aforesaid, and the same shall revert to the city of New Orleans.

That the city of New Orleans reserves to herself, and excepts from said sale, each and every landing and ferry-wharf now existing, and each and every nuisance-wharf now existing, and all the revenues arising from the same.

That the said purchaser or lessee shall accept and take possession of the wharves, landings, and levees contained within the section adjudicated to him, in the condition in which the same may be on the first day of October next, (1858.)

80 And the said purchaser or lessee, so accepting and taking possession of the said wharves, landings, and levees, shall repair the same, and keep the same in good order and condition during the whole term of four years and nine months, commencing with the first day of October, 1858, and ending with the 30th June, 1863, provided the lessee shall have no right to build any sheds, warehouses, or platforms on the said wharves without the permission of the common council.

That the levees named in the foregoing paragraph shall extend back to the line of the street or streets fronting the river, that is to say, that the levee comprised within the section herein sold (the second) shall extend back to the line of New Levee street, from Felicity road to Race street and to Front Levee, from Race street to North Market street, except that portion in rear of wharf No. 15; and it is hereby well understood that the city claims and reserves to herself the right to appropriate, sell, lease, and use or in any manner dispose (as may be deemed expedient by the common council) of any portion of the levees comprised within said section, whenever any of said levees shall become, in the opinion of the common council, unproductive, inoperative, or useless to and for the great purposes of commerce or public use.

That the repair of the levees required to be made by the said purchaser or lessee as aforesaid, shall consist in grading the same according to the grades already established, in covering the same with hard substances, such as lake and oyster shells or gravel; in keeping the

same in good order by filling up all holes on their first appearance with hard substances as above mentioned; in filling up with river sand all parts of the same which may cave or sink below the grades as aforesaid; and in keeping the bulk-heads on the outside of the same always in good order and condition, and whenever the batture shall form so as to require the levee to be extended, the lessee shall, on the order of the common council, fill up such parts of the batture, and build such levees as said common council may deem necessary, as well as all new bulk-heads; the repairs of the wharves to be made by the purchaser or lessee under this contract shall consist in repairing all holes in the flooring of said wharves and inclined planes immediately upon their first appearance; in raising all portions of the wharves which may have sunk, or which may sink below the levels now established; in taking out and renewing all caps and stringers, piles, fender piles, flooring, etc., which may be found rotten or decayed; in building anew all wharves which, from general decay, may require the same; and extending into the river all wharves which may require extension, so as to have at all times a depth of water of twenty feet at the water-line of each and every wharf used for the landing and discharge of ships; that in making the repairs aforesaid, the piles used shall be of lake or river timber of the best quality, eleven by eleven inches square at one end, and nine by nine inches square at the other end, and shall be driven from fifteen to twenty feet into the solid ground at distances of ten feet from the centers; the heads of the piles shall be squared according to the levels to be given by the city surveyor, and shall receive and support eleven by eleven inches square caps, which shall be strongly fastened to each of the said piles with drag nails one inch square by eighteen inches long; the stringers used shall be at least ten inches square, shall rest at right angles upon the caps at distances of five feet from the centers, and shall be strongly fastened to each intersection with a cap with drag nails one inch square by eighteen inches long; the plank used for the flooring shall be of yellow pine of the best quality, twelve inches wide, not less than three inches thick, and not less than fifteen feet long; they shall
81 be strongly nailed to each of the stringers with seven-inch pressed spikes, two at each end of each plank, and one at each intersection of the stringers.

That at each and every wharf used for the landing and discharge of ships a row of fender-piles shall be driven, each pile ten feet apart, and fastened in a strong manner to the piles of the wharves with at least two screw-bolts of one and a half inches in diameter; that on the front of said wharves two fender-caps shall be placed, one on a level with the flooring of the wharf, and the other at five feet above low-water mark; said fenders shall be twelve by twelve inches square, and to be fastened to the piles of the wharf with screws one and one-half inches in diameter; and that said lessee, in taking possession of said wharves, shall repair and keep in good order and condition, during the whole term of this lease, such fender-piles and fender-caps as do now exist, connected with the wharves so accepted and taken possession of; and in case there shall be no fender-caps, as above required, at the time of accepting and taking possession of the said wharves, then said lessee shall cause said fender-pile and fender-caps to be driven and placed as above required at his cost, and shall keep the same in repair during the whole of said term of four years and nine months.

That on all the wharves accepted and taken possesion of by said John Baker, lessee, mooring-piles twelve inches square shall be driven as follows, to wit: on the ship-wharves, double piles, wherever the harbor-

master shall direct; that each of the aforesaid mooring-piles shall be strongly fastened to the piles of the wharves, with at least two screw-bolts of one inch in diameter, and shall project three and a half feet above the flooring of the wharves; and said lessee, in accepting and taking possession of the said wharves, shall repair and keep in good order and condition, during the whole of said term of four years and nine months, such mooring-piles as do now exist, connected with the wharves so accepted and taken possession of, and in case there shall be no mooring-piles, as above required, at the time of accepting and taking possession of said wharf or wharves as aforesaid, then said lessee shall cause said mooring-piles to be driven and fastened at his own cost, and shall keep the same in good repair during the whole of said term of four years and nine months.

That said John Baker, lessee, shall be bound, whenever ordered by the common council, to build all additional wharves that may be necessary.

That all works and repairs to be done under this contract shall be done under the supervision of the surveyor and chairman of the committee on streets and landings of the two boards of the common council; and in case of the refusal on the part of said lessee to make all said works and repairs, it shall be the duty of the surveyor to have them made forthwith, at the expense of said lessee.

That all works and repairs required to be done by said contract shall be done by said John Baker, lessee, after fifteen days' notice thereof is given by the surveyor.

That it is well understood that in case of neglect or failure by said John Baker, lessee, to commence or finish the works during the time mentioned in the orders of the surveyor, the common council shall have the right to annul this lease without putting the lessee in default, as required by article 1905 of the civil code, and without applying to a court of justice to annul the same, and without indemnity to such lessee; and it is also well understood, that in case said lessee shall fail to make, or shall abandon the repairs, the said lessee shall forfeit all notes he may have furnished to the city; and that the common council shall have the right to re-sell the revenues of said section, for account and risk of said defaulting lessee and his sureties.

That the common council may revoke, set aside, and annul this
82 contract whenever the said lessee shall neglect or fail to pay at maturity any note given in part payment of the purchase-price of the aforesaid reveunes; and thereupon the city may take immediate possession of the wharves, landings, and levees contained in the section herein sold, and proceed to collect the revenues collectable within the same, or re-sell such section for account and risk of said John Baker, as the council may deem proper.

That said lessee shall be furnished by the surveyor with an inventory of all spars, timbers, stage-planks, etc., used for mooring vessels, and shall give to said mayor a receipt for the same, and shall at all times keep on hand for the use of vessels a sufficient supply of the same, and shall return to the city at the end of this lease an inventory of equal amount and value of the same.

That the said lessee and his securities shall, in solido, be responisble for all damages which may be claimed of the city by any party or parties who may sustain injury or damage in consequence of the neglect of said lessee to comply with the requirements of this contract.

That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations now governing the same, and under

existing ordinances, and no change shall be made without the consent of both parties; that all ships and other water-crafts shall pay the dues collectable under the existing ordinances to the aforesaid lessee, in his section; and in case of the removal of any ship or water-craft from one section to another, the dues so collectable shall be divided pro rata between the lessees of the sections in which said steamboats, ships, or other vessel may be, according to the number of days said ship or vessel lie and be within the several sections.

That the whole extent of the aforesaid second section is hereby appropriated as a landing for shipping.

And in order to come to a better and full understanding, the contracting parties do agree to carry out and execute in good faith this contract, to all its intents and purposes, according to the terms, conditions, and stipulations contained in ordinance No. 4007 of the common council, entitled "An ordinance concerning the wharves of the city of New Orleans, and providing for farming the revenues thereof," and approved on the twenty-first of June last, as well as if said ordinance was extended at length in the body of this act, a copy of the same being hereto annexed and signed, ne varietur, by the contracting parties, the undersigned witnesses and notary, in order to be identified herewith.

This privilege is granted to the said John Baker for and in consideration of the price and sum of two hundred and forty-four thousand dollars, in payment of which the said John Baker has furnished fifty-seven notes, dated this day, and drawn by him to the order of and indorsed by W. N. Batson and C. A. Eager, and payable at the Louisiana State Bank, to wit:

Twenty-seven notes of two thousand eight hundred and four dollars and sixty cents ($2,804.60) each, payable respectively on the tenth of October, first of November, and first of December, eighteen hundred and fifty-eight; first day of each of the months of July, August, September, October, November, and December, eighteen hundred and fifty-nine; first day of each of the months of July, August, September, October, November, and December, eighteen hundred and sixty; first day of each of the months of July, August, September, October, November, and December, eighteen hundred and sixty-one; first day of each of the months of July, August, September, October, November, and December, eighteen hundred and sixty-two.

83 Twenty-nine notes of five thousand six hundred and nine dollars and nineteen cents ($5,609.19) each, payable respectively on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and fifty-nine; on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and sixty; on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and sixty-one; on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and sixty-two; on the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and sixty-three.

And lastly, one note of five thousand six hundred and nine dollars and twenty-nine cents, payable on the first of June, eighteen hundred and sixty-three.

Which notes being signed, ne varietur, by the undersigned notary, to identify them herewith, were handed to the said Gerard Stith, mayor, who acknowledges the delivery thereof.

And now personally intervene in these presents:

Messrs. William Nichols Batson and Charles Austin Eager, both of this

city, who, having read what is above written declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract of lease by said John Baker, and bind themselves jointly and in solido, in favor of the city of New Orleans, in the sum of sixty-on' thousand dollars, payable on demand to said corporation.

Now, the condition of the above bond or obligation is such, that if the said John Baker shall well and faithfully perform and execute the present contract in accordance with the terms thereof, then the said bond to be null and void, but otherwise to remain in full force and virtue, the said W. N. Batson and C. A. Eager hereby waiving the benefit of division and discussion granted by law to securities.

Done and passed in my office, in New Orleans, the day, month, and year first above written, in presence of Paul E. Théard and Oscar LeBlanc, competent witnesses, who have hereunto signed their names with the said parties and me, notary, after due reading of the foregoing.

Original signed:

JOHN BAKER.
W. N. BATSON.
C. A. EAGER.
GERARD STITH, *Mayor.*

Correct:

J. J. MICHEL, *City Attorney.*
PAUL E. THEARD.
OSCAR LEBLANC.
E. BOUNY, *Not. Pub.*

A true copy.
New Orleans, November 4, 1871.

(Signed) E. BOUNY, *Not. Pub.*

84 *Commission.*

Eighth district court for the parish of Orleans.

State of Louisiana to Thomas Lynne, clerk of the eighth district court for the parish of Orleans, or any judge or justice of the peace, greeting:

Know ye, that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority diligently to examine all witnesses whatever, as well on the part of the plaintiff as of the defendant, in a certain suit now pending in the eighth district court for the parish of Orleans, wherein

John W. Cannon is plaintiff, and the city of New Orleans is defendant, being case No. 545 on the docket of this court.

Witnesses: John W. Cannon and Thomas P. Leathers, of New Orleans.

Therefore, we desire you, that at certain times and places, by you to be appointed for that purpose, you cause the said witnesses to come before you, that you then and there examine them apart, upon their respective corporal oaths first taken before you upon the Holy Evangelists; that you reduce their examinations to writing, and cause the witnesses to sign the same; and when you so shall have taken them, that you send the same, with this commission, closed up under your seal, to us in our eighth district court, in the city of New Orleans, without delay.

Witness, the honorable Henry C. Dibble, judge of our said court, this

twenty-eighth day of October, in the year of our Lord one thousand eight hundred and seventy-one, and the ninety-sixth year of the Independence of the United States.

(Signed) J. D. TAYLOR, *D'y Clerk.*

Testimony taken under commission October 31, 1871.—*Filed November* 16, 1871.

J. W. CANNON, *vs.* CITY OF NEW ORLEANS. } No. 545.

Present, W. W. King, for plaintiff; Assistant City Attorney Walsh, for defendant.

JOHN W. CANNON, plaintiff, sworn in his own behalf:

Question. Are you the plaintiff in this case?

Answer. Yes.

Question. How long have you been engaged in the navigation of the Mississippi River?

Answer. Since 1836.

85 Question. Were there wharves then built in front of the port of New Orleans?

Answer. There were none when I came here.

Question. How did boats and vessels discharge their cargoes then?

Answer. They landed and rigged stages on shore.

Question. Are there any places now in the port of New Orleans, embracing both banks of the river, which are in the port of New Orleans, where steamboats may land without any wharves whatever?

Answer. Yes, sir; so far as water goes, they can land from above the elevator to three miles below the city. As far as depth of water is concerned, they can land against the bank anywhere.

Question. Are the wharves built throughout the entire port on both banks of the river?

(Counsel for defendant reserves all legal objections to these questions.)

Answer. No, sir; there are wharves only built on the lower side from the cotton-press; they are scattered along from the elevator to the lower cotton-press.

Question. On what bank is that?

Answer. On the New Orleans side.

Question. Are there any on the opposite bank?

Answer. None, except some private wharves at warehouses. There are some warehouses there where they have private wharves.

Question. Do not boats often lay up on the opposite bank?

Answer. Yes, sir.

Question. What do you think is the distance from the elevator to the lower cotton-press?

Answer. Six or seven miles; about seven miles.

Question. Are the wharves continuous for that distance?

Answer. They are scattered; in some places there are wharves, and in some places there are no wharves.

Question. How much of the port of New Orleans on the left bank, the city side of the river, is there, according to your recollection, where there are wharves built?

Answer. I suppose there is two-thirds or three-fourths of the distance

where there are wharves built; but they are not in proper repair, except between places. And even where there are wharves they are not kept in repair; they were not last season, and I don't suppose they are this season.

Question. Is there a portion of the levee or wharves designated for the landing of boats engaged in the river trade?

Answer. Yes, sir; there is a portion set aside for steamboats, a portion for barges, and a portion for steamships and ships.

Question. What is the portion designated for steamboats engaged in the river trade?

Answer. A very small portion; I suppose one-eighth—there is not more than one-eighth.

Question. Name the portion; between streets and streets.

Answer. The steamboat-landing runs about seven or eight squares, the whole distance from the steamship-landing above to the steamship-landing below; say about eight squares, that would include the entire landing for steam-boats; the balance is for ships, barges, and steamships.

Question. Is that, in your opinion, sufficient space for the accommodation of all the steamboats engaged in the river trade?

Answer. Not by nearly one-half.

Question. Are you not the master and captain of the steamer Robert E. Lee?

86 Answer. Yes, sir.

Question. And owner, too?

Answer. Yes, sir.

Question. Have you suffered any inconvenience or damage for the want of proper room for landing your vessel and the discharge of your cargoes?

Answer. Yes, sir.

Question. Please give us, as near as you can, an estimate of your inconvenience and damage you have sustained for the want of proper accommodations for the landing and discharge of your cargoes?

Answer. Yes; from five to fifteen hundred dollars a trip. I paid one trip, for damages, a thousand dollars or twelve hundred dollars.

Question. What do you suppose would be the average for the season?

Answer. I couldn't hardly tell. Part of the season there is plenty of room, because there is no business doing. But when there is business doing, there is not sufficient room for the boats at all.

Question. How much during the boating season is the damage you receive for the want of proper room to land your boat and discharge your cargoes?

Answer. I wouldn't hardly know how to get at that.

Question. Make the best estimate you can from your experience.

Answer. I don't know how to go about doing this. I have seen the time when I would give five hundred dollars to know how to get in and get my freight out, and get my freight on board again on time.

Question. You know you have suffered damages for the want of this accommodation?

Answer. Yes, sir; very serious damage, because I had to leave and go up to Thalia street, and come down again to get freight aboard, because they wouldn't haul freight up there; the road was too bad. When you get off the plank wharf, it is mud up to the hubs of the drays sometimes, or half up to the hub, and it is perfectly impassable, almost.

Question. Are you or not, in landing freight, required by the city authorities to roll the freight off the wharves on to the levee?

Answer. Yes, sir.

Question. Have the levees been kept in proper order to receive your freight?

Answer. No, sir. The plank wharves have been very good; the new wharves as far as to the barge landing from Canal street are good; but after you step out on the dirt or levee, it is mud and water.

Question. Have you or not suffered serious damage in running your vessel, from the bad condition of the levee for receiving her cargoes and freight?

Answer. Yes, sir.

Question. State what is the amount each trip paid by you for levee dues?

Answer. Eighty-four dollars for levee dues each trip.

Question. Have you paid that amount on each trip for the last several years?

Answer. I have paid it all the time.

Question. You have paid it ever since you have been running the Robert E. Lee?

Answer. Yes, sir.

Question. How long is that?

Answer. Over five years.

87 Cross-examined:

Question. What character of vessels have you been engaged in running?

Answer. Steamboats.

Question. Altogether?

Answer. Yes, sir.

Question. What wharf have you been in the habit of landing at?

Answer. From the steamship landing above to the other steamship landing; from one end to the other of the steamboat wharf.

Question. What has been your usual wharf to land at?

Answer. At the foot of Canal street.

Question. How long have you been landing your vessels there?

Answer. For about sixteen years, as a specialty, at that particular wharf.

Question. What has given rise to the inconvenience you complain of on account of not having room to land your freight?

Answer. The city, in the first place, sold a batture that I and everybody paid for. The boats built that batture, and built that wharf. The city sold the very ground which we paid for, and cut us off and shut us out, so that we have not sufficient room at all to land our freight. And then the bad condition of the levee, in not being properly improved, almost shuts us out from landing entirely. I have put what cotton I could on this levee in the mud and water, and then paid as high as a thousand or twelve hundred dollars damages because I had no other place to put it.

Question. How do you know that the city sold the piece of ground you speak of?

Answer. I bid on the lots myself. I stood present myself when it was sold. It was sold to several parties—the ground where I could put thousands of bales of cotton.

Question. Is that the only way you know that the city sold it?

Answer. Yes.

Question. Was the inconvenience you speak of—not having room to land your freight—caused by the running of railroad tracks there?

Answer. In some degree it was; yes, sir. But the greatest degree

was in the selling of that batture, and throwing us in that space, and not keeping the levee in proper repair.

Question. What time was it you speak of when the levee was not in repair?

Answer. It was from November to April.

Question. What year?

Answer. 1870 and 1871; and not only that year, but ever since the war the levees have not been in proper repair to put freight on it; and when boats were paying the wharfage they paid.

Question. Were you inconvenienced that way before the railroads were run there?

Answer. Yes, sir.

Question. How many times have you had to move your vessel from the regular landing to Thalia street on account of not having room or accommodation at the regular landing?

Answer. About, in the last year, ten or twelve times; when I had to put cotton off, raising steam and going up, then coming down again, because they would not haul the freight up there.

Question. How much, in dollars and cents, have you lost by not having room to land your freight at the regular landing?

88 Answer. I would just say ten thousand dollars since the war. I have refused to take cotton because I didn't know whether I had a place to put it out. I will say twenty thousand dollars that I have lost altogether by want of room.

Question. What space of ground do you require for the purpose of landing your largest cargo?

Answer. It will take two squares of ground for five thousand bales of cotton.

Question. What have your average trips amounted to?

Answer. I brought one hundred and thirteen thousand bales of cotton in about ten months. I make weekly trips.

Question. State what there is on the ground sold by the city that prevents you from landing your freight there.

Answer. There are stores built there on a great portion of it, such as Conery's, Edwards', and others.

Question. To what extent have you been injured by this railroad?

Answer. To some extent, but they take up only a space of ten or twelve feet. There are two tracks. We are injured by them, but not so much as by the other. The railroad is only about ten feet across a hundred and fifty feet. I say we have a space of one hundred and fifty feet, and the railroad runs through it about ten feet in width; and a hundred and fifty feet is not enough. The city has an iron building there, perfectly useless, that would give us an immense room if that was taken away.

(Signed) J. W. CANNON.

Sworn to and subscribed to before me this thirty-first day of October, 1871.

(Signed) O. M. TENNISON, *D'y Clerk.*

A true copy:

(Signed) O. M. TENNISON, *D'y Clerk.*

89 *Testimony taken under commission, November* 3, 1871.—*Filed November* 16, 1871.

JOHN W. CANNON
vs.
THE CITY OF NEW ORLEANS. } No. 545.

Present, W. W. King for plaintiff; Assistant City Attorney Walsh for defendant.

T. P. LEATHERS sworn for plaintiff:

(Counsel for defendant reserves all legal objections to this testimony.)

Question. How long have you been engaged in running steamboats in the river trade?

Answer. Thirty-six years.

Question. Were there wharves built at the time you first came to New Orleans, or not?

Answer. No, sir; there were no wood wharves; there were bulk-heads put up.

Question. How did steamboats land at that time?

Answer. They landed against these slips that were boarded up. They had side-boards to them, these slips.

Question. How did they discharge their cargoes or freight?

Answer. They put it on the dirt-work and shells; they had some shelling done, and ballast.

Question. Did they or not put up staging to land freight by?

Answer. Yes, sir.

Question. Are there any portions of the port of New Orleans, including both banks of the river, where steamboats may land without wharves now?

Answer. Yes, sir.

Question. What do you mean by that—how do they land?

Answer. Against the mud bank.

Question. Give us an estimate of the proportion of shore on the left or city side of the river covered by wharves now.

Answer. I do not know where the limits of the city go.

Question. Between just below the barracks and Carrollton.

Answer. I don't think there is one-half covered with wharves.

Question. Are there any wharves on the Algiers side?

Answer. No, sir; there have been some at the founderies, but they have been broken down.

Question. They were for the special use of the founderies?

Answer. Yes, sir.

Question. Is there any portion of the port of New Orleans designated for the landing of steamboats engaged in the river navigation?

Answer. There is now at this time, but only for the last two months. They have proportioned a portion for the Vicksburg packets and other river steamers.

Question. Do you know the extent of the wharves assigned to the landing of steamers engaged in the river trade?

Answer. There is not more than half a mile, I guess, for the river boats.

Question. Is that sufficient space for the accommodation of all the steamers engaged in the river trade?

90 Answer. No, sir; nothing like it.

Question. How much more space would be required for their proper and comfortable receiving and discharging of their cargoes?

Answer. Double the distance that is now occupied by steamers.

Question. Are you required, in the discharging and receiving of your cargoes, to put your cargoes out on the levee, by the city authorities?

Answer. Yes, sir; we are compelled, in order to get room.

Question. Is there room sufficient for your purpose now on the levee?

Answer. No, sir.

Question. What width of space do you consider would be required for the proper receiving and discharging of your cargoes on the levee—how wide should the levee be for that purpose?

Answer. A boat ought to have her length, to do justice to her.

Question. But on the levee how much space would be necessary in width?

Answer. It ought to be three hundred feet wide.

Question. Is there that much width there now?

Answer. No; not that much anywhere.

Question. How much clear room is there now, free of railroads and other incumbrances?

Answer. Thirty-nine yards above Custom-house street to St. Joseph street, from the wood-work; that is, with the ferry-landing, which includes one hundred and thirty feet. I suppose the wood-work is a hundred feet wide.

Question. How much is the levee?

Answer. That is pretty much all the levee there is below Custom-house street; there is only fifteen yards there besides the wood-work, and thirty-nine yards above Custom-house street.

Question. In what condition has the levee been kept for the last several years? State whether in good or bad condition.

Answer. Very bad since 1865, sir; very much crowded for the want of room.

Question. Do you mean the wharves or the levee?

Answer. I mean the levee. There has not been room there to do the business.

Question. Have you suffered, or not, damages for the want of sufficient room on the levee?

Answer. I have suffered heavy damages for want of room and a place to put my cargo. I was four days last year putting out a cargo of forty-five hundred bales of cotton, at an expense of thirteen hundred dollars in wages, about; and then I put it out in bad condition, and in the mud. The result was I lost fifty-one hundred dollars last year during the season. I lost one entire trip.

Question. That loss, did it not arise from the want of proper accommodation on the levee?

Answer. Yes, sir.

Question. Have you not been under great embarrassment at times to know whether you ought to receive freight or cotton, to bring to New Orleans, on account of apprehension you had that there would not be room to discharge it on the levee?

Answer. Yes, sir; I left a great quantity of cotton last season, and I telegraphed to the mayor to know whether I could risk a load, and merchants and planters were anxious to ship. After I had lost one trip, I telegraphed to know whether I could get room to discharge a cargo.

Question. What vessel do you command?

91 Answer. The Natchez, sir.

Question. How much do they charge you for levee dues?

Answer. Eighty-eight dollars a trip.

Question. Your vessel is a weekly packet?

Answer. Yes, sir.
Question. You know the steamer Robert E. Lee?
Answer. Yes, sir.
Question. Is she also a weekly packet?
Answer. Yes, sir.
Question. What points do you run to?
Answer. Vicksburg and intermediate landings.
Question. And the Robert E. Lee the same?
Answer. Yes; she runs to Vicksburg.
Question. Do you think you get a fair equivalent in accommodation furnished you for the amount you pay for levee dues?
Answer. No, sir.

Cross-examined:

Question. What character of vessels have you been in the habit of running to this port?
Answer. She has been a large boat, say a five-thousand bale boat when loaded.
Question. I speak of the number and kind of vessels you have been in the habit of running since 1836?
Answer. Since then the capacity has increased. They have all been steamboats; six named Natchez, five Princess, and one Charmer, built expressly for the trade.
Question. At what particular wharf have you been in the habit of landing?
Answer. At the foot of Canal street. Sometimes the packet-landing has been below.
Question. But in the past year or eighteen months?
Answer. We landed where we could get in. This season I have landed at the foot of Common and Canal streets. Last season I landed where I could get in. We landed at the foot of Poydras street last season, also.
Question. Give us the particular boundaries.
Answer. It was always between Custom-house and Poydras. I think one trip was above St. Joseph street.
Question. You speak of not having room enough to land your cargo; to what cause do you attribute that?
Answer. To the building of railroads and depots and sugar-sheds, and occupying the levee for other purposes.
Question. This difficulty has resulted from railroad tracks and sugar-sheds; did you ever have any trouble before these were built?
Answer. No, never before that; we never lost a trip.
Question. If it were not for these depots, railroad tracks, and sugar-sheds, which you complain of, would you have room enough on the levee?
Answer. Yes. We might want more front. If we had the business here we had in 1860, the boats could not put their cargoes out at this time. There is not space enough and the levee is in bad condition.
Question. What space do you require to land an average load?
Answer. We ought to have five thousand square yards on the levee for a load of cotton—for the load itself.
Question. For the largest load?
92 Answer. Yes, sir; for the largest load. It would require that to head it up. That is the way we deliver it.
Question. What is the condition of these wharves now where you land?

Answer. The condition is better than it has been for a good while. We have, individually, improved it ourselves. We have put some thousand barrels of shells on it, on the levee where we land, and we are still putting them there.

Question. Were there not improvements put on by the city?

Answer. Some, sir. It is not a good wharf yet. They are shelling it still.

Question. The time you speak of, when you lost so much money by the condition of the levee, was it immediately after the rain?

Answer. It was during muddy weather. It was cold and freezing. The mud was pretty deep, and we could not get it out. There were not any shells on it, and it was impossible, almost, last season to get a dray through the levee in some places.

(Signed) T. P. LEATHERS.

Sworn to and subscribed before me this third day of November, 1871.

O. M. TENNISON,
Deputy Clerk, Eighth District Court.

A true copy:
(Signed) O. M. TENNISON, *D'y Clerk.*

Document S.—Statement of the city surveyor.—Filed Nov. 16, 1871.

First question. The entire length of each shore of the river embraced within the corporation limits of the city?

Answer. Length of left-bank shore is ten miles three thousand seven hundred and ten feet. Length of right-bank shore, thirteen and one-quarter miles.

Second question. A statement showing on what portions of the said shores wharves have been constructed?

Answer. From Toledano to Louisa streets, four miles three thousand two hundred and eighteen feet, and about seven thousand five hundred feet of actual wood-wharf front, and sixteen thousand eight hundred and thirty-eight feet of wooden bulkhead.

Third question. A statement showing how far the wharves project from the levee at different points, and what would be the average?

Answer. About ninety feet average.

Fourth question. A description of the levee on both banks of the river; what portions have been graded and leveled for the uses of commerce, and what portions are mere embankments of earth thrown up to protect the city from overflow, and the height of such levees?

Answer. The levee from Toledano to Louisa street, distance about four miles three thousand two hundred and eighteen feet, has been graded and mostly shelled, for commercial purposes. The levee
93 from Louisa street to lower line of the city is an embankment protected by wooden revetments. The levee from Toledano street to upper line of the city is an embankment faced with wood, ranging in height from three to nine feet. The levees above and below the Canal-street ferry, fronting the fifth district, are embankments partly faced with wood, ranging in height from four to ten feet, and occupied by ship-yards, dry-docks, and ferry-landings, and three or four private wharves.

Fifth question. What space is left between the streets running parallel to the river and the edge of the wharves? Mention the narrowest and

larger spaces, and give a general idea throughout the entire front on both shores.

Answer. Width from property-line to wood bulkhead :

Toledano street	64′ 0″	Jackson street	68′ 0″
Canal street	200′ 0″	Elysian Fields street	170′ 0″
Bienville street	140′ 0″	St. Louis street	145″ 0″
St. Anne street	188′ 0″	Ursulines street	175′ 0″

W. H. Bell, city surveyor, being duly sworn, doth depose and say that the above statements are true, to the best of his knowledge and belief.

(Signed) W. H. BELL,
City Surveyor.

Sworn to and subscribed to before me this eleventh day of November, 1871.

(Signed) W. L. EVANS,
Second Justice Peace.

DOCUMENT SS.—FILED NOVEMBER 16, 1871.

DEPARTMENT OF IMPROVEMENTS,
City Hall, New Orleans, La.

Statement of certificates issued to contractors for repairing and reconstructing the wharves from November 1, 1870, *to April* 30, 1871.

1871.	Jan. 16.	Eager, Ellerman & Co	$47,017 51	
	April 8.	Same	71,813 22	
	April 30.	Same, interest to April 26	1,666 07	
				120,496 80
	Jan. 16.	M. Carvin	$35,000 00	
	April 7.	Same	71,618 81	
	April 30.	Same, interest to April 26	1,661 56	
				108,280 37
		Total		$228,777 17
Ord. 275.	1870, July 12.	Q. N. Thomas, 10,000 bbls. shells,		3,800 00
				$232,577 17

94 John Cockrem, being duly sworn, certifies to the correctness of the above statement.

(Signed) JOHN COCKREM,
Administrator.

Sworn to and subscribed before me this sixteenth day of November, 1871.

(Signed) N. TREPAGNIER, *Clerk.*

Testimony of W. H. Bell, city surveyor.—Filed November 16, 1871.

W'M H. BELL, city surveyor, being duly sworn, deposes and says:

I am city surveyor of New Orleans, and have been since April, 1870.

I have supervised the repair and reconstruction of the wharves in front of the city of New Orleans since April, 1870, and am perfectly familiar with their condition during that time, and with the amount of money expended by the city for the purpose of repairing and reconstructing the same.

It is a part of my duty to inspect the work done on the wharves and levees in front of the city of New Orleans, and to issue certificates to the different contractors performing said work.

I know that since November 1, 1870, to April 30, 1871, the sum of $232,577.17 in certificates was issued to contractors for repairing and reconstructing the wharves in front of this city.

The wharves in front of the city from the foot of Canal street up to the foot of Poydras street has always been considered about the best landing, and the steamers landing at that particular wharf have always had a fair and reasonable return for the amount of levee dues paid by them. That particular wharf has been in good condition since November, 1870, and the great cause of complaint now made by the owners of vessels landing at that wharf is owing to the obstructions placed thereon by the different railroad companies, for which the city of New Orleans is in no manner responsible. But for the railroad-tracks now running along the levee, the vessels landing at the particular wharves designated would have plenty of room to land their cargoes.

I am satisfied that they are benefited by the facilities afforded them fully in proportion to the amount of wharfage charged by the city of New Orleans.

(Signed) W. H. BELL,
City Surveyor.

Sworn to and subscribed before me this fourteenth day of November, 1871.

(Signed) W. L. EVANS,
Second Justice Peace.

95 *Continuance and order to print record.—Filed November* 16, 1871.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

This case, fixed for this day for trial, came on.

Present, W. W. King, for plaintiff; Assistant City Attorney Walsh for defendant.

When, after hearing pleadings and evidence—

It is ordered, by consent of all parties, that the minute clerk be and is hereby instructed to cause the records in this case to be printed, and that the case be continued for the purpose, subject to admission of such evidence as the counsel in the case may agree upon.

Bill of exceptions.—Filed November 18, 1871.

Eighth district court, parish of Orleans.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

Be it remembered that, on the trial of this cause, counsel for plaintiff offered in evidence the testimony of plaintiff and T. P. Leathers, and also certain city ordinances, for the purpose of proving the amount of wharfage charged by the city of New Orleans, the condition of the wharves and levees, etc. To the introduction of this testimony counsel for de-

fendant objected, on the following grounds, viz: that these matters, and more particularly the rate of charges, are entirely within the administrative or legislative control of the city, and with which courts of justice will not interfere, the only question for the court to decide being the legality and constitutionality of the charge.

The court decided that plaintiff had a right to have the question of the reasonableness or unreasonableness of the wharfarge charge and the condition of the wharves passed upon; that the evidence was consequently admissible, and for that reason permitted the testimony to be received.

To this decision of the court the counsel for defendant respectfully excepted, and tendered this bill of exceptions for my signature, which I have signed this eighteenth day of November, 1871.

(Signed) HENRY C. DIBBLE, *Judge.*

96 *Testimony by consent.—Filed November* 28, 1871.

I, Charles A. Eager, do hereby certify that I am a member of the firm of Eager, Ellerman & Co.; that for the work done on the wharves and landings by this firm for the city the firm received in city bonds, as per their contract with the city, on which they lost about seventeen per cent. on such bonds as they converted into currency.

November 17, 1871.

(Signed) C. A. EAGER.

The above testimony for plaintiff is admitted by consent, and the case submitted to the court by both parties on the evidence already taken.

November 25, 1871.

(Signed) ELMORE & KING,
Attorneys for Plaintiff.

(Signed) GEO. S. LACEY,
City Attorney.

Submitted.—Minutes, November 28, 1871.

J. W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

On motion, and by consent of counsel in this case, and on filing further testimony for plaintiff—

It is ordered that this case be submitted to the court for adjudication on briefs to be furnished.

CANNON
vs.
CITY OF NEW ORLEANS.

It is hereby understood & agreed that the foregoing printed pamphlet, from page 1 to 96, inclusive, may be filed in the Supreme Court of the U. States as a part of the transcript or record; and that the same shall have the same force & effect as if it had been copied & certified to by the clerk of the supreme court of Louisiana.

GEO. S. LACEY,
City Attorney.

97 *Rule to admit evidence.—Minutes, Feb. 24th, 1873.*

Eighth district court.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

On motion of Elmore and King, of counsel for plaintiff, and for the reasons filed, it is ordered by the court that the defendant do show cause, if any, on the 29th day of February, 1872, why the record of the suit of the city of New Orleans vs. E. J. Rigney, No. 4321 of the docket of this court, should not be received in evidence in this case, or why the case should not be re-opened so far as to give the plaintiff an opportunity of offering the said record in evidence.

Note of evidence.

Filed February 27th, 1872.

A. M. TENNISON, *D'y Clk.*

98 Eighth district court.

J. W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

Plaintiff offers in evidence the petition and all the documents annexed, and the answer in suit No. 4321 of the docket of this court.

Rule.—Minutes Feb. 28th, 1873.

Eighth district court, No. 545.

The rule herein on defendant to show cause why the case submitted to the court for determination should not be re-opened in so far as to permit the plaintiff to introduce certain newly-discovered evidence, fixed for this day, came on for trial—present, Elmore and King,
99 for plaintiff in rule; present, H. H. Walsh, ass't city att'y, for defendant in rule—when, after hearing the pleadings, evidence, and counsel, the court, considering the law and the evidence to be in favor of the plaintiff in rule—

It is ordered that this rule be made absolute, and the plaintiff be now ordered to introduce his said evidence.

Whereupon, after hearing said additional evidence and counsel, the court again took the cause under advisement.

Reasons for judgment.

Filed November 20th, 1872.

A. M. TENNISON,
D'y Clerk.

Filed March 20th, 1873.

JOHN BURKE, *Clerk.*

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

The plaintiff in this suit, who is the owner and master of the steamboat Robert E. Lee, a vessel licensed under the acts of Congress to carry on the coasting trade, and enrolled in the port of New Orleans, attacks the legality and constitutionality of the ordinances and regulations of the city of New Orleans imposing levee or wharfage charges.

Under these ordinances and regulations the steamboat Robert E. Lee, being a vessel of 840 tons, and not leaving more than once a week, is required to pay annual taxes or charges amounting to $3,360.00.

The petition alleges that the so-called levee dues exacted by the city of New Orleans is paid into the general treasury of the city and used for the general purposes of the city.

101 The plaintiff avers that this imposition of wharfage or levee dues is illegal and unconstitutional, for several reasons: 1st. The regulations violate the laws of the State, by putting restraints upon the right of all the inhabitants of the city and of the nation to use the levee in front of the city of New Orleans, which is a public place. 2nd. They conflict with the act of Congress regulating commerce between the States, granting licences to vessels, etc., and especially the act of Congress of 1812, admitting Louisiana into the Union.

3rd. The ordinance violates the 2nd paragraph of section 10 of the 1st article of the Constitution of the United States, which declares that "no State shall, without the consent of Congress, lay any duty of tonnage."

102 4th. The ordinances also violate the 5th paragraph of the 9th section of the 1st article of the Constitution of the United States, which provides as follows: "Nor shall vessels bound to and from one State be obliged to enter, clear, or pay duties in another."

5th. And, finally, they violate the 3rd paragraph of the 8th section of the 1st article, which reserves to Congress the power to regulate commerce with foreign nations and among the several States.

The plaintiff sues to recover the sum of $3,360, which he has paid to the city during the past twelve months, and also the sum of $850 damages, which he claims from the city by reason of neglect on the part of the authorities to maintain the wharves and landings in good repair. He annexes a detailed statement of damages sustained.

103 The prayer of the petitioner is, that the ordinance particularly set forth in the petition, imposing wharfage or levee dues, and under which the collections have been made from the plaintiff, be declared to be illegal, unconstitutional, and void; and that a writ of injunction issue to restrain the city of New Orleans from enforcing the said ordinance as against the plaintiff.

A rule nisi was ordered, and when it came on for hearing a writ of injunction was issued pro formo, upon consent of counsel for the city of New Orleans, and the city was enjoined from enforcing the ordinance attacked as against the plaintiff pending the suit.

The city then moved to set aside the injunction under article 307 of the Code of Practice, and the motion was granted.

The city then filed an answer, in which it is denied that the plaintiff has paid any sum of money to the city for the privilege of land-

104 ing or mooring his vessel at the port of New Orleans, except such sum as was equitably and legally due for levee or wharfage charges. The answer avers that the plaintiff was never coerced to

pay to the city any sum whatever, but that all payments made were voluntarily made by him, and that therefore the plaintiff is without any right, either in law or equity, to demand the re-imbursement of any money paid the city; denies that she was bound to keep the levee or landing in front of the city in good order, or furnish facilities for discharging vessels, that matter being within the legislative control and discretion of the city; but that, notwithstanding no legal obligation existed, the city has nevertheless, for many years past, constructed and maintained at great expense wharves and landings for un-
105 loading vessels, and that whatever money may have been paid by the plaintiff to the respondent was paid for the use of the wharves and the other works upon said , and for no other purpose whatever.

The respondent further avers that she was authorized by law to impose wharfage charges for keeping the wharves in proper condition, in order to insure the expeditious shipment and unloading of merchandise; and that the levee dues collected has been for this purpose.

Respondent further denies that the wharves or other works were at any time in a bad condition, or that the wharfage dues were disproportionate to the benefit received by plaintiff; and that, even if such were the case, the facts cannot be enquired into by a court of justice, for the time and money for erecting and maintaining wharves and other works and the imposition of a tariff therefor is purely an administrative
106 matter, under the sole control of the municipal authorities, and with which the courts will not interfere.

The city specially denies that the resolutions or ordinances referred to in plaintiff's petition are illegal, unconstitutional, or void; or that the construction of wharves or landings, the exaction of levee dues to meet the costs of constructing and maintaining the same, is an interference with the locus publicus.

Having proceeded so far in the preparation of my opinion, I had intended to examine thoroughly the constitutional questions at issue, and in my mind I was determined that judgment should be rendered for plaintiff.

The evidence shows that the wharfage charges are a burthen upon commerce, and seem to me to be in violation of those provisions of the Constitution of the United States relied upon by the plaintiff.

107 But I find that the supreme court, in the case of the Second Municipality vs. Pease, examined the exact issue made in the case, and determined that the levee charges or wharfage dues were not in violation of those constitutional provisions.

This case went to the Supreme Court of the United States, and the decision was sustained by reason of the court being equally divided.

It would not be improper nor in violation of any rule to consider this question as not settled, there having been but one opinion of the supreme court of the State, and that opinion not having been passed upon by the Supreme Court of the United States, it being equally divided on the question when brought before it; and I should have so held, had I not considered it unbecoming for an inferior court to take the initiative in setting aside a decision of the Supreme Court.

108 Therefore, considering the decision in the case of the Second Municipality vs. Pease,

It is ordered, adjudged, and decreed that there be judgment for the defendant.

Judgment, November 20, 1872.

In this case, submitted to the court for determination, after delibera-

tion and for the reasons assigned in the written opinion this day delivered and filed,

It is ordered and adjudged and decreed, that there be judgment in favor of the defendant, the city of New Orleans, and against the plaintiff, John W. Cannon, and that this suit be dismissed at plaintiff's cost.

109 The written opinion of Judge H. C. Dibble, 8th dist. court, has been lost or mislaid, and cannot be found after diligent search.

Superior district court.

Rule and order.—Minutes March 20, 1873.

On motion of W. W. King, of counsel for plaintiff, and on suggesting to the court that this cause has been transferred from the eighth district court of the parish of Orleans to the docket of this court, and that there has been a trial of the case before the said eighth district court, and that a judgment has been rendered therein against the plaintiff, but never signed,

110 It is ordered by the court that the defendant show cause, on Thursday, 27th day of March, inst., why a new trial should not be granted upon the ground on file.

Superior district court, No. 2467.

Order: Rule absolute.—Minutes March 27th, 1873.

The rule taken herein by plaintiffs for a new trial, assigned for trial this day, came on—present, W. W. King, esq., for plaintiff; A. C. Lewis, ass't city att'y, for def'n'—when, after hearing pleadings, evidence, and counsel, the court ordered that said rule be made absolute and a new trial granted to plaintiff as prayed for; and it is further

111 ordered, that on consent of counsel this case be submitted to the court for adjudication upon the evidence on file.

Judgment.—Rendered May 1st, 1873.

This case submitted to the court for adjudication, after deliberation and for the reasons orally assigned this day in open court, considering the law and the evidence to be in favor of defendant,

It is ordered, adjudged, and decreed that there be judgment in favor of said defendant, the city of New Orleans, and against the plaintiff, John W. Cannon, with costs of these proceedings.

Judgment signed May 6th, 1873.

JACOB HAWKINS, *Judge.*

112 *Motion of appeal.—Filed May 9th*, 1873.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS.

Superior district court.

On motion of W. W. King, of counsel for plaintiff, and upon suggesting to the court that there was a final judgment rendered on Thursday, the first day of May, 1873, and signed on the day of May, 1873,

against him in said suit, in which there is error, which will work to him an irreparable injury, unless he can be relieved therefrom by an appeal to the supreme court:

It is ordered by the court that the plaintiff be allowed, upon the
113 said plaintiffs' giving bond and security according to law in the sum of three hundred dollars, and for want of time to make out the record earlier, that the same be made returnable on the first Monday of June next.

Bond of appeal.—Filed May 9, 1873.

Know all men by these presents, that we, John W. Cannon as principal, and as security, residing in New Orleans, as surety, are held and firmly bound unto the clerk of the superior district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of three hundred dollars, for the payment
114 whereof we bind ourselves, our heirs, executors, and administrators firmly by these presents. Sealed with our seal, and dated in the city of New Orleans on this ninth day of May, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas the above bound*ed* John W. Cannon has this day filed a motion of appeal from a final judgment rendered against him in the suit of said Cannon against the city of New Orleans, No. —, in the supreme court or district court for the parish of Orleans, on the first day of May, 1873, and signed on the sixth day of May, 1873:

Now, the condition of the above obligation is such, that the above bound John W. Cannon shall prosecute his appeal and shall satisfy whatever judgment may be rendered against him, or that the
115 same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said shall be liable in his stead.

JOHN W. CANNON.
Per WM. W. KING, [SEAL.]
Att'y for Pl'ff.
E. CONERY, [SEAL.]
President Capt's' Association.

Superior district court of the parish of Orleans.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS.

Agreement.—Filed May 13, 1873.

In this case it is agreed that the printed copy of the *of the* rec-
116 ord, so far as it goes, shall be used by the clerk of the court in making the record for the supreme court on appeal, and the clerk is requested to comply with this agreement.

May 13th, 1873.

(Signed) WM. W. KING,
Att'y for Plaintiff.

(Signed) A. C. LEWIS,
Att'y for City.

Clerk's certificate.

I, , clerk of the superior district court for the parish of Orleans, do hereby certify, that the foregoing 149 pages contain a true, correct, and complete transcript of all proceedings had, 116½ documents filed, and testimony and evidence adduced upon the trial of the cause wherein Jno. W. Cannon is plaintiff and the city of New Orleans is defendant, and numbered 2467 of the docket of this the superior district court for the parish of Orleans.

In testimony whereof I hereunto set my hand and affix the impress of the seal of the said court on this 26th day of July, in the year of our Lord one thousand eight hundred and seventy-three, and the ninety-eighth year of the Independence of the United States.

[SEAL.] (Signed) JOHN BURKE, *Clerk.*

116¾ Supreme court of the State of Louisiana, holding sessions at the city of New Orleans.

TRANSCRIPT OF APPEAL.

Filed Sept. 2nd, 1873.
(Signed) M. P. JULIAN,
D'y Clerk.

Order to place on summary docket.—Filed Oct. 30, 1873.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 4777.

As the question involved in this case arises in a contest as to the constitutionality of a municipal tax, the clerk will please place it on the summary docket as of the day the record was filed.

Oct. 30th, 1873.
C. P. art. 879.
(Signed) WM W. KING,
Att'y for Pl'ff.

117 Filed Nov. 19th, 1873.

M. T. JULIAN,
D'y Clerk.

Supreme court State of Louisiana.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } 4777.

It is hereby admitted that the accompanying document, from 1 to 18 pages inclusive, was erroneously omitted from the transcript of appeal heretofore filed; and it is agreed that the said document shall be filed with the clerk of the supreme court, and be considered a part of the original transcript, with the same force and effect as though it had made a part thereof.

Dated at the city of New Orleans this 18th day of November, A. D. 1873.

GEO. S. LACEY,
City Att'y.
WM. H. KING,
Att'y for Pl'f.

118 Superior dist. court, parish of Orleans.

JNO. W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 2467.

Testimony taken on trial of this cause in the district court, and erroneously omitted from the transcript of appeal heretofore sent to the supreme court of Louisiana.

8th dist. court, parish of Orleans.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

GEO. S. LACEY, city attorney of the city of New Orleans, being duly sworn, doth depose and say: That at the time the petition was filed in the suit of the city of New Orleans vs. E. I. Rigney, No. 4321, 8th district court, parish of Orleans, this deponent was entirely ignorant of the amount
119 of the receipts and expenditures connected with the wharf or levee referred to in said petition during the time the said wharf or levee was in the hands of the defendant, Rigney, under the agreement which had been entered into with the city of Jefferson; nor was it necessary, for the purposes of the suit aforesaid, that a correct statement of the receipts and expenditures should be made. That the averment that the said Rigney had collected a large sum of money, amounting to not less than twenty-five thousand dollars, was made without any data from the city officials, and solely for the purpose of being high enough to cover any claim which might be found due and owing by said Rigney. That after the petition aforesaid was filed, this deponent discovered that the receipts of such wharf and levee, during the pendency of the suit with Rigney and prior thereto, did not amount to more than the expen-
120 ditures connected with said wharf and levee. Further says that the averment in the petition aforesaid relative to the receipts by Rigney is not correct, and was made inadvertently and in error.

GEO. S. LACEY.

Sworn to and subscribed before me this 30th day of May, A. D. 1872
W. L. EVANS,
Second Justice Peace.

Eighth dist. court for the parish of Orleans.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 545.

JOHN G. DEVEREUX, being duly sworn, does depose and say, that he believes Table F, on page twenty-three of the printed record, is substantially correct, with the exception of the item of one hundred thousand dollars in the column of total expenditures, which should stand at
121 fifty-six thousand eighty-seven dollars and twenty-one cents, this being the actual expenditure, and being a decrease from the estimated amount of one hundred thousand dollars of forty-three thousand nine hundred and twelve dollars and seventy-nine cents. The wharves

were sold for the years subsequent to September, 1858, down to and including June, 1865, for one million and fifty-two thousand dollars. All of this amount was not collected, and in a settlement between the contractors and the city the notes of the contractors to the amount of four hundred and thirty-five thousand three hundred and ninety dollars and ninety-four cents were restored to them. The one million and fifty-two thousand dollars (stated as collected in Table F) was made up of the following items:

$53,370
221,472
221,472
221,472
221,472
110,736.

122 The amounts of notes returned, as shown in Table F, under the column of total expenditures:

The amount of receipts from wharves from April 12th, 1852, to April 4th, 1870, amounts to	$3,774,082 53
Amount of expenditures for same time	3,532,161 87
Excess of receipts to 4th April, 1870	$241,920 66

The accompanying statement shows the actual receipts and expenditures on account of the wharves and landings from the 4th day of April, 1870, to 31st December, 1871, inclusive:

During that the expenditures amounted to	$998,787
While the receipts during the same period amounted only to the sum of	$463,443
Leaving an excess of expenditures from April, 1870, to Dec. 31st, 1871	$535,344

By deducting from the surplus expenses of five hundred and thirty thousand three hundred and forty-four dollars the amount of over-
123 receipts up to the 4th April, 1870, two hundred and forty-one thousand nine hundred and twenty dollars, it will be seen that there is a difference of two hundred and ninety-three thousand four hundred and twenty-four dollars, and this amount the city has been compelled to carry. In other words, the receipts on account of the wharves and landings from April 12th, 1852, to 31st December, 1871, has been two hundred and ninety-three thousand four hundred and twenty-four dollars less than the expenditures. The receipts and expenditures for the year 1872 have necessarily to be estimated. The expenditures, as shown from the accompanying statement, will be three hundred and seventeen thousand five hundred and sixty dollars; the receipts three hundred thousand dollars. To the best of my knowledge and belief the receipts will not exceed the expenditures the current year.

I annex to my testimony copies of ordinances Nos. 478, 691, 796, 1139,
124 administration series, authorizing the issue of one million dollars of bonds for the improvement and reconstruction of the wharves and landings. The bonds for the entire amount of one million dollars have been issued, with the exception of about two hundred and twenty-eight thousand dollars, and these last-mentioned bonds, amounting to two hundred and twenty-eight thousand dollars, will, according

to the estimate, have to be issued in order to meet the expenditures connected with the wharves and landings.

All the items of expenditures on my statement, (annexed,) down to 31st December, 1871, have been actually made, and there are no other receipts on account of wharves and landings down to that date than those set forth in the statement.

JNO. G. DEVEREUX.

Sworn to and subscribed before me this 30th day of May, A. D. 1872.
W. L. EVANS,
2nd Justice Peace.

125 JOHN COCKREM, administrator of improvements, being duly sworn, deposes and says, that the amount of two hundred and twenty-eight thousand dollars wharf-improvement bonds, being the unexpended balance 31st December, 1871, of the one million dollars bonds authorized to be issued, and which amount, two hundred and twenty-eight thousand dollars, is estimated as needed in the estimates for the current year 1872,) will be requisite to pay for the work on the wharves and landings for this year.

JOHN COCKREM,
Admin. of Imps.

Sworn to and subscribed before me this 30th day of May, A. D. 1872.
W. L. EVANS,
2nd Justice Peace.

Exhibit of actual receipts & expenditures on a/c wharves and landings.

4 APRIL, '70, to 31 DEC., '70.

Cash paid out this year		$52,627
" " subsequently, a/c this year		5,058
Wharf-improvement bonds		400,000
Cash received	$148,793	

126 SIX MONTHS ENDING 30 JUNE, '71.

General service		$9,383
Wages		11,325
Salaries		5,983
Morgan wharf		33,914
Wharf-improvement bonds		139,000
Cash received	$166,843	

SIX MONTHS ENDING 31 DEC., '71.

General service		$77,684
Wages		17,677
Salaries		2,803
Wharf-improvement bonds		233,000
Morgan-wharf contract		10,333
Cash received	$147,807	
		$998,787
	$463,443	463,443
Deficit		$535,344

Estimates for the year 1872, (*ending* 31 *Dec'b'r.*)

Wharves & landings (dep. of improvement)		$82,560
" " " (" " commerce)		7,000
Balance of issue $1,000,000		228,000
Receipts	$300,000	
	$300,000	$317,560

127 MAYORALTY OF NEW ORLEANS,
City Hall, October 7th, 1870.

[No. 478, administration series.]

An ordinance for the issue of bonds for improvements to wharves and landings.

Be it ordained by the council of the city of New Orleans, That for the payment of the work now being done under the contracts for the improvement and reconstruction of wharves and landings bonds shall be issued by the city of New Orleans, and the mayor and administrator of finance are hereby authorized and required to sign the same to the extent of three hundred and fifty thousand ($350,000) dollars, limiting the issue of the amount that may become necessary for the aforesaid payments.

Be it further ordained, etc., That said bonds shall be dated December 1, 1870, and be issued in sums of five hundred ($500) and one thousand dollars ($1,000) each, payable in ten (10) years after date, bear-
128 ing interest at seven and three-tenths ($7\frac{3}{10}$) per cent. per annum, payable semi-annually on the first days of June and December.

Be it further ordained, etc., That, to meet the interest of said bonds and the principal thereof at maturity, the receipts of wharfage and levee dues are hereby specially pledged, and the administrator of finance is required to reserve semi-annually, on the first days of June and December in each and every year, a sum sufficient to meet the interest due at the date of reservation, and during the months of January and July of each year, ten per centum of the whole debt, in addition, to be regarded as a sinking fund, to be applied to the extinguishment of the principal of said bonds at the maturity thereof.

Be it further enacted, etc., That, in order to further secure the payment provided in the foregoing section, it is hereby specially made the duty of the administrator of finance to apply the money so re-
129 served to the extinction of the interest and to the purchase or payment of said bonds, and to no other purposes whatever: *Provided,* That purchases of said bonds shall be made by sealed proposals, invited by ten (10) days' notice in the official journal.

Adopted by the council of the city of New Orleans October 6th, 1870.
Yeas—West, Delassize, Pierce, Walton.

BENJ. F. FLANDERS, *Mayor.*

H. CONQUEST CLARKE, *Secretary.*

MAYORALTY OF NEW ORLEANS,
City Hall, May 13*th,* 1872.

A true copy of ordinance No. 478, administration series.

H. CONQUEST CLARK,
Secretary.

MAYORALTY OF NEW ORLEANS,
City Hall, Jan'y 26th, 1871.

[No. 691, administration series.]

An ordinance to amend ordinance No. 478, administration series,
130 and increasing the amount of bonds, and providing for the payment thereof.

1. *Be it ordained*, That ordinance No. 478, Administration Series, be, and the same is hereby, amended so as to authorize and require the issue of bonds to the extent of four hundred thousand dollars, subject to the limits and conditions prescribed in ordinance No. 478, except so far as such limits and conditions may be hereby altered or repealed.

2. *Be it further ordained*, That section three of ordinance No. 478, Administration Series, be repealed and stricken out, and the following be, and it is hereby, inserted in lieu of the section thus repealed:

"That to meet the principal and interest of said bonds, the levee dues are specially pledged; and the administrator of finance is hereby required to deposit with the fiscal agent, on the first Monday in
131 each month out of said levee dues, one twelfth of the annual interest on the amount of bonds unredeemed at the date of such deposit and one one hundred and twentieth of the principal thereof, out of which fund the said bonds shall be redeemed, in the manner provided for in section four of ordinance 478.

Adopted by the council of the city of New Orleans, January 24th, 1871.

Yeas; West, Shaw, Delassize, Lewis, Walton.

BENJ. F. FLANDERS, *Mayor*.

A true copy:

H. CONQUEST CLARKE, *Secretary*.

MAYORALTY OF NEW ORLEANS,
1872.

A true copy of ordinance No. 691, Administration Series:

H. CONQUEST CLARKE, *Secretary*.

132 MAYORALTY OF NEW ORLEANS,
City Hall, April 13th, 1871.

No. 796.—Administration Series.

An ordinance to amend and re-enact ordinance No. 691, Administration Series, (providing for the issues of bonds for the reconstruction of the wharves,) by increasing the amount of bonds and providing for the issue of certificates.

SECTION 1. *Be it ordained*, That ordinance No. 691, Administration Series, be, and the same is hereby, amended and re-enacted so as to authorize and direct the additional issue of bonds to the extent of three hundred thousand ($300,000) dollars, subject to the limits and conditions prescribed in ordinance No. 478, Administration Series, and section two of ordinance No. 691, Administration Series.

SEC. 2. *Be it further ordained*, That the administrator of public accounts is hereby authorized to issue wharf certificates to contract-
133 ors for work already performed, said certificates to be taken up

whenever the bonds authorized by section one of this ordinance are ready for issue.

Adopted by the council of the city of New Orleans, April 11th, 1871.

Yeas; Cockrem, Shaw, Delassize, Remick, Lewis, Walton, Bonzano.

BENJ. F. FLANDERS, *Mayor.*

A true copy:

H. CONQUEST CLARKE, *Secretary.*

MAYORALTY OF NEW ORLEANS,
City Hall, 1872.

A true copy of ordinance No. 796, Administration Series:

H. CONQUEST CLARKE, *Secretary.*

MAYORALTY OF NEW ORLEANS,
City Hall, October 11th, 1871.

No. 1139.—Administration Series.

134 An ordinance to amend and re-enact ordinance No. 691, providing for the issue of bonds.

Be it ordained, That ordinance No. 691, Administration Series, be, and the same is hereby, amended and re-enacted, so as to authorize the additional issue of bonds to the extent of three hundred thousand dollars, subject to the limits and conditions prescribed in ordinances Nos. 478 and 691, Administration Series.

Adopted by the council of the city of New Orleans, October 10th, 1871.

Yeas: Cockrem, Shaw, Delassize, Remick, Lewis, Bozano.

BENJ. F. FLANDERS, *Mayor.*

A true copy:

H. CONQUEST CLARKE.

MAYORALTY OF NEW ORLEANS,
City Hall, 1872.

A true copy of ordinance No. 1139, Administration Series:

H. CONQUEST CLARKE, *Secretary.*

135 CITY OF NEW ORLEANS *vs.* EDWARD J. RIGNEY. } No. 4321.

To the honorable the judge of the eighth district court for the parish of Orleans:

The petition of the city of New Orleans, a municipal corporation chartered by the State of Louisiana and located in the parish of Orleans in said State, respectfully represents:

That on or about the 9th day of November, A. D. 1869, the city of Jefferson sold and conveyed unto Edward J. Rigney, a resident of the city of New Orleans, the right to receive and collect all and singular the revenues due to the said city of Jefferson from the several sources
mentioned in and embraced by the list on schedule annexed to
136 a certain act made and executed before John Tabor, notary pub-

lic in and for the parish of Jefferson, a certified copy of which is hereunto annexed and made part of this petition.

Further shows that in consideration of said transfer the said Rigney stipulated and agreed to pay to the said parish and city of Jefferson, a yearly rental of twenty-three hundred dollars for the period of five years from the date of the aforesaid act, in manner and form as follows, viz:

Five hundred and seventy-five dollars in cash, the balance semi-annually in notes of the following amounts, $575, payable May 9th, 1870; $1,150, payable November 9th, 1870; and thereafter on the 9th day of May and on the 9th day of November, of 1871, '72, '73, '74, the further sum of $1,150.00, as will more fully appear from the copy of agreement hereunto annexed and made part hereof as aforesaid.

137 Further shows that in and by the aforesaid act it was expressly understood and agreed that any failure or refusal on the part of said Rigney to pay the said notes at maturity, shall operate to cancel and annul the aforesaid agreement.

Further shows unto your honor, that the said defendant paid, under the contract aforesaid, the cash instalment, and the three notes first due, amounting in the aggregate to the sum of $3,450; but that on the 13th day of November, 1871, one of the aforesaid notes for eleven hundred and fifty dollars matured and became due and payable, and that notwithstanding the said note was duly and legally presented to the said defendant for payment, he refused to make such payment and

138 permitted the said note to be protested, as will more fully appear from the said note and *and* protest, to be produced on the trial of this case.

And your petitioner further shows unto your honor that the said defendant during the continuance of the aforesaid agreement received and collected under said contract, for wharf or levee dues, and otherwise, a large sum of money, amounting in excess of the aforesaid sum of $3,450.00, to not less than $25,000.00, for which the said defendant is liable to account to petitioner.

Further your petitioner shows unto your honor, that the said defendant, Edward J. Rigney, was at the time of his failure to pay the aforesaid note, receiving and collecting the revenues and charges

139 hereinabove particularly referred to as authorized by the aforesaid agreement, and that the said defendant, unless enjoined by this honorable court, will improperly and illegally claim the right to act under the aforesaid contract, and will receive and collect all and singular the revenues arising and to arise from all the sources referred to in the articles of agreement hereinabove made a part of this petition, and that a writ of injunction is necessary not only in order to restrain the said defendant from thus acting, but also for the purpose of protecting your petitioner's legal and equitable rights in the premises.

Further shows that your petitioner has tendered to the said defendant the unpaid notes by him given at the time of the execution

140 of the aforesaid agreement, and has amicably requested the said defendant to desist from the acts herein complained of, but that he refuses to receive the said notes and to comply with your petitioner's most reasonable demand, as will more fully appear from the protest hereunto annexed and made a part hereof.

Further shows, that in and by virtue of a certain act of the legislature of Louisiana, approved March 16th, 1870, your petitioner has acquired all the rights and privileges connected with the aforesaid agreement heretofore owned, possessed, and enjoyed by the city of Jefferson;

and, by and through the said act, has acquired the right to stand in judgment in this cause.

Wherefore your petitioner brings this suit, and prays that a writ of injunction may be directed to issue, and that therein and thereby
141 the said defendant may be enjoined and restrained from setting up any rights or claims, under or by virtue of any contract or any agreement whatever between the city of Jefferson and himself, in relation to the collection of levee-dues, particularly the act of agreement referred to in this petition; and that the said defendant be enjoined and restrained from collecting, by himself, or through another, any portion of the revenues, which may have arisen, or which may hereafter arise, from all sources whatever embraced by the aforesaid act, and any list or schedule thereunto annexed; that the said defendant Edward J. Rigney may be cited to appear and answer this petition; that in due course of law, the injunction herein to be granted, may be perpetrated; that
142 the aforesaid agreement may be cancelled and annulled, avoided and held for naught; that the said defendant may be condemned to pay unto your petitioner the sum of twenty-five thousand ($25,000.00) dollars, with interest, according to the law; that your petitioner recover cost, and have general relief in the premises.

GEO. S. LACEY,
City Attorney.

Affidavit.

STATE OF LOUISIANA,
City of New Orleans:

Benj. F. Flanders, mayor of New Orleans, being duly sworn, doth depose and say that the facts and allegations set forth in the foregoing petition are true to the best of his knowledge and belief.

BENJ. F. FLANDERS,
Mayor.

Sworn to and subscribed before me this 5th day of November, A. D. 1871.

W. L. EVANS,
2 Justice Peace, Parish of Orleans, La.

143 *Order.*

Let a writ of injunction issue as within prayed for, and according to law, without bond.

New Orleans, Dec. 7th, 1871.

HENRI C. DIBBLE,
Judge.

Contract of sale to Edward J. Rigney of levee-revenues, November 9th, 1869.

Filed March 20th, 1873.

JOHN BURKE,
Clerk.

STATE OF LOUISIANA,
City and Parish of Jefferson:

Know all men by these presents, that on this the ninth day of November, in the year of our Lord one thousand eight hundred and sixty-

nine, before me, John Tabor, notary public in and for the city and parish of Jefferson, State of Louisiana, duly commissioned, and
144 in the presence of the witnesses hereinafter named and undersigned, personally came and appeared John F. Lowe, mayor of the city of Jefferson, herein acting in his official capacity as such, as the party of the first, and also appeared at the same time and place Edward J. Rigney, acting and accepting for himself, his heirs or assignees, as a party of the second part, and the said John F. Lowe, acting as aforesaid, declared that by virtue of the authority herein vested, and in conformity with the provisions of a resolution of the common council of the said city of Jefferson, passed at the meeting of the board of aldermen on the fifth day of November, A. D. 1869, and approved by the mayor of the said city on the eighth day of the same month and year, which said resolution is numbered 129, he did and does sell
145 and confirm unto the said E. J. Rigney, party of the second part, or his assigns, the sole and exclusive right to receive and collect all and singular the revenues due to the city of Jefferson, from all sources whatsoever embraced in the following and subjoined list and schedule of charges known as the levee-dues, said revenue-dues now and heretofore collected from all water-craft or other boats whatever, rafts, steamboats, flat-boats, or pirongues on the Mississppi River for the term of five years, dating from the signing and sealing of this contract, to have and to hold the said right, and to collect the said revenue to himself or his assigns for the full term above stated, according to the following list of charges now fixed by ordinance, and known as levee-dues, to wit:

146 First. On all ships and sail-vessels for every sixty days, ten cents per ton for the first thousand tons, and eight cents for every ton over one thousand tons.

Second. On steamships, ten dollars for the first five days, and two dollars per day for every day thereafter.

Third. On steamboats, seven dollars and fifty cents for the first five days, and one dollar for every day thereafter.

Fourth. For each flat-boat or barge, for every fifteen days two cents for every foot in length.

Fifth. For each coasting-scow or pirongue, whether propelled by steam or otherwise, for every five days, one dollar and fifty cents, and fifty cents for every day thereafter.

Sixth. For breaking each boat, three dollars per boat.

147 Seventh. For each broken-up boat, three dollars for every fifteen days.

Eighth. For each log cut into cord-wood, three cents for each log, for every thirty days.

Ninth. Each string of cedar-raft, three dollars for every thirty days.

And the said Rigney, party of the second part, shall have the right to collect and receive for himself or his assigns, and for their use and benefit, all revenues now due to the city of Jefferson from any source whatsoever, or which may become due for any of the above levee-charges, and he is hereby subrogated to all the rights which the city of Jefferson now has or may hereafter acquire against parties owing or indebted for any of the above levee-charges, and this contract is a full sale, delivery, transfer, and subrogation to and in favor of said Rigney, party
148 of the second part, from the city of Jefferson, excepting and providing that this contract does not embrace in its sale of levee dues or revenues heretofore unpaid, the amount held by Nicholas Schneider, and which said amount is now in process of litigation, the city of

Jefferson hereby reserving to herself the right to collect and retain all such amounts as may now be due by the said Nicholas Schneider, in his capacity as former collector of levee-dues.

The consideration for which this sale and transfer is made is this: that the said Edward J. Rigney, hereunto signing, accepts the said sale and subrogation, and, in pay and compensation thereof, agrees and binds himself, his heirs and assigns, to pay to the said city of Jeffer-
149 son a yearly rental of twenty-three hundred dollars for the full period of five years from the date hereof, the said payments to be made in form and manner as follows, to wit:

Five hundred and seventy-five dollars shall be paid in cash, on the delivery and the completion of this contract, to the treasurer of the city of Jefferson; the balance shall be paid semi-annually as follows, to wit:

Five hundred and seventy-five dollars on the ninth day of May, A. D. 1870. And the sum of eleven hundred and fifty dollars on the ninth day of November, A. D. 1870, succeeding, and thereafter the said Edward J. Rigney shall pay regularly on the 9th day of May, and on the ninth day of November, of each of the four succeeding years, to wit, of the years eighteen hundred and seventy-one, and eight-
150 een hundred and seventy-two, and eighteen hundred and seventy-three, and eighteen hundred and seventy-four, (1871, 1872, 1873, 1874,) the further sum of eleven hundred and fifty dollars, which said payments shall be made and secured by ten (10) promissory notes, drawn by the said Rigney to his own order and satisfactorily endorsed, payable in ten different installments, and bearing interest at the rate of eight per cent. per annum, from date until payment. The said notes bearing even date with this instrument, and marked ne varietem by me, notary, to identify them herewith.

The true intent and meaning of this contract is that the city of Jefferson hereby sells to Mr. Edward J. Rigney, his heirs and assigns, the full right to collect, and for his own benefit, all dues that may
151 accrue to the said city of Jefferson, known as levee-dues, from the levee of the Mississippi River, from Toledano to Joseph street, for five years from the date hereof; and the said Edward J. Rigney is hereby subrogated to the rights of the city of Jefferson to sue for and collect all back revenues, from whomsoever due, always excepting and reserving the amount from Nicholas Schneider. This revenue arises under the ordinances and resolutions of the city council heretofore adopted.

The consideration for this sale is a yearly rental of twenty-three hundred dollars, for five years, payable semi-annually, and secured by ten promissory notes as afore described.

The internal-revenue stamp of five dollars is hereto attached and cancelled.

152 It is understood and agreed hereby that any failure or refusal on the part of the said Edward J. Rigney to pay the said notes at maturity shall operate to annul and cancel this contract.

This done and signed before me, notary public, in the city of Jefferson, in the presence of subscribing witnesses, this ninth day of November, A. D. 1869.

(Signed) JOHN F. LOWE, *Mayor.*
(Signed) EDWARD J. RIGNEY.

Witness:
(Signed) S. D. MOODY.
(Signed) W. G. MCCONNELL.

Tender and protest.—Filed March 20, 1873.

153 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that, on this fifth day of December, in the year of our Lord one thousand eight hundred and seventy-one, at the hour of half past nine o'clock a. m., I, Andrew Hero, jr., a notary public in and for the parish of Orleans and city of New Orleans, State of Louisiana, duly commissioned and qualified, at the request of the Hon. Benj. F. Flanders, mayor of the city of New Orleans, did repair to the place of business in this city of Edward J. Rigney, and did then and there, in the presence of Messrs. George Cenas and Paul A. Conard, witnesses of lawful age, domiciliated in this city, deliver to said Edward J.
154 Rigney a letter, to him written and addressed by said hon. Mayor Flanders, (whereof a true copy is hereinafter written,) and tender unto him, said Rigney, his seven promissory notes therein described, as also demanded of him the settlement of monies or accounts therein referred to; which said letters is in the words and figures following:

MAYORALTY OF NEW ORLEANS,
New Orleans, Nov. 29th, '71.

EDWARD J. RIGNEY, Esq.:

DEAR SIR: As you have failed to comply with the terms of the agreement relative to the collection of wharf and levee dues, entered into between the city of Jefferson and yourself on the 9th of November, 1869, that agreement, by your default, has become void; and you are hereby notified and required to desist from doing any act under
155 and by virtue of the contract referred to. You are also notified that a demand is hereby made upon you for the payment of all monies collected by you under the said contract, after making such deductions as by law you are authorized to make. I hereby tender to you the following notes, bearing date November 9th, 1869, given by you at the time the agreement was entered into, viz:

One note, payable		Nov. 12th, 1870,	for	$1,150;
One	"	May 12th, 1872,	"	$1,150;
One	"	Nov. 12th, 1872,	"	$1,150;
One	"	May 12th, 1873,	"	$1,150;
One	"	Nov. 12th, 1873,	"	$1,150;
One	"	May 12th, 1874,	"	$1,150;
One	"	Nov. 12th, 1874,	"	$1,150.

Yours, respectfully,

BENJ. F. FLANDERS, *Mayor.*

And to which said demand and tender said Rigney declined to receive said notes, or to make said settlement.

156 Thereupon, I, said notary, at the request of said Mayor Flanders, did protest, and by these presents do publicly and solemnly protest, as well against the said Edward J. Rigney as against all others whom it doth or may concern, for all loss, damage, injury, costs, charges, and expenses which the said city of New Orleans has suffered, or may hereafter suffer, for want of said Rigney's compliance with the terms of said letter, and his continued illegal action in the premises.

This done and passed at New Orleans aforesaid, in the presence of the aforesaid witnesses, who signed with me, the notary.

(Or'g'l s'g'd) GEO. CENAS.
P. A. CONARD.
ANDREW HERO, JR., *Not. Pub.*

A true copy of the original (duly stamped) on record in my office.
NEW ORLEANS, *Dec.* 5th, 1871.

ANDREW HERO, JR., *Not. Pub.*

157 *Writ of injunction.*

Filed 12th December, 1871.

ROB'T LYNNE, *D'y Clerk.*

Filed 20th March, 1873.

JOHN BURKE, *Clk.*

Eighth district court for the parish of Orleans.

STATE OF LOUISIANA:

To Edward J. Rigney, New Orleans, La., greeting:

CITY OF NEW ORLEANS
vs.
EDW. J. RIGNEY. } No. 4321.

158 You are hereby commanded, enjoined, and restrained, in the name of the State of *the State of* Louisiana, and of the eighth district court for the parish of Orleans, from setting up any rights or claims, under and by virtue of any contract or any agreement whatever between the city of Jefferson (now 6th district of the city of New Orleans) and yourself in relation to the collection of levee-dues, particularly the act or agreement entered into on the ninth day of November, 1869, before John Tabor, not. pub. in and for the parish of Jefferson.

And you are further enjoined and restrained from collecting, by yourself or through another, any portion of the revenues which may have arisen, or which may hereafter arise, from all sources whatever embraced by the aforesaid act, or in any list or schedule thereunto annexed.

159 And you are so enjoined and restrained until the further order of this honorable court.

Witness the Honorable Henry C. Dibble, judge of our said court, this 8th day of December, in the year of our Lord one thousand eight hundred and seventy-one, and in the ninety-sixth year of the Independence of the United States.

ROBERT LYNNE, *Clerk.*

Sheriff's return.

Received December 8th, 1871, and on the ninth day of the same month and year served copy of the written writ of injunction on Edward J. Rigney in person.

Returned same day.

J. MILLUER, *D'y Sh'ff.*

Sh'ff's fees, $2.00.

160 *Citation.*

Eighth district court for the parish of Orleans, in the city of New Orleans.

CITY OF NEW ORLEANS
vs.
EDWARD J. RIGNEY. } No. 4321.

Mr. EDWARD J. RIGNEY, *New Orleans, La.:*

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your

answer to the same in the office of the clerk of the eighth district court for the parish of New Orleans, in ten days after the service hereof.

Witness the honorable Henry C. Dibble, judge of the said court, the 8th day of December, in the year of our Lord 1871.

ROBERT LYNNE,
D'y Clerk.

161 *Sheriff's return to citation.*

Received on December 8th, 1871, and on the twelfth of the same month and year served copy of within citation and accompanying petition on Edward J. Rigney, in person. Returned same day.

J. H. MUILUER, *D'y Sh'ff.*

Sh'ff's fees $2,00.

Answer and prayer for a jury.

Filed 20th, 1871.

ROBERT LYNNE, *D'y Clk.*

Filed March 20th, 1873.

JOHN BURKE, *Clk.*

162 CITY OF NEW ORLEANS } 4321.
vs.
E. J. RIGNEY. }

Eighth district court, parish of Orleans.

And now comes into court the defendant, and for answer to plaintiff's petition denies each and every allegation therein contained, except those that may be hereafter admitted especially.

Your respondent admits that on the 9th day of November, 1869, the late city of Jefferson sold and conveyed unto him the right to receive and collect all and singular the revenues and dues due said city of Jefferson, from the several sources mentioned in and embraced by the list or schedule referred to in plaintiff's petition, as per act, before John Tabor, notary public, annexed to her petition.

163 Your respondent admits that for and in consideration of such sale and transfer, stipulated and agreed to pay to said city of Jefferson a yearly rental of twenty-three hundred dollars for the period of five years from the date of his said contract, and as fully set forth in plaintiff's petition. He also admits the execution of the several promissory notes as stated in said petition.

Your respondent further admits that he has paid all of said notes and the cash installment, amounting, as set forth in the plaintiff's petition, to the sum of $3,450; but he denies that the note falling due on the 13th day of November, 1871, was properly protested by said plaintiff for the reasons hereinafter set forth, and he denies that he has ever

164 failed or neglected to make such payment as was contemplated by the parties to said contract.

Now, your respondent *re*vers that his said notes mentioned in plaintiff's petition was not deposited in bank by the city of New Orleans for collection, as is usual and customary, so that he might have received the usual notice given by all the banks in said city, of its maturity and

the day of payment. And he avers that said city itself gave no such notice prior to immediate demand on the said 13th day of November, which was after business-hours.

Your respondent avers that early on the morning of the 14th of November, 1871, next day after the maturity of the notes mentioned in plaintiff's petition, he tendered to said city of New Orleans payment thereof through its proper officer, to wit, the administrator of finance,

165 who refused to receive the same.

Your respondent shows that he has never therefore failed to honor his paper, and that even were it a transaction among merchants it would not be so considered. He avers that it was never contemplated by the parties to said contract, nor was it their intention, that a mere omission to pay on the very minute the notes fell due should operate ipso facto as a cancellation thereof, and that in asserting to the contrary the plaintiff is seeking to foist on the court and jury a narrow-minded construction to the contract unworthy of a moment's serious consideration.

Your respondent avers that this suit is frivolous and vexatious, and that it was instituted for the purpose of harassing and annoying him,

166 the said city well knowing that it had no legal grounds to set up in avoidance of the contract mentioned in her petition; and your respondent says, that by resorting to the extraordinary process of an injunction, thus for the time being virtually annulling said contract, said city has not only rendered itself liable to this respondent for all profits he might otherwise have realized during the pendency of this suit from the collection of *of* the revenues to which said contract and sale entitled him, but that she has rendered herself liable for all expenses attending this litigation, such as, say, loss of time to this respondent, attorney's fees, etc., as well as to special damages.

Your respondent further shows that the actual loss to him during the pendency of the injunction herein sued out by said city of

167 New Orleans, in being deprived from the collection of the revenues to which he is entitled, under said contract, will amount to the sum of at least four thousand dollars per month from the date of the suit to the end of the lease; should the injunction remain in force during that time, which will be for the term of thirty-five months, making the sum of ($140,000) one hundred and forty thousand dollars, which he now claims.

Your respondent further shows that he is informed, and therefore charges, that the fees for the attorneys-at-law whom he has been compelled to employ to defend this suit will not be less than five thousand dollars, which he also claims from said city.

Wherefore your respondent prays that plaintiff's petition be

168 dismissed; that the writ of injunction herein issued may be dissolved with twenty per cent. special damages on one hundred and forty thousand dollars as special damages, and five thousand dollars attorney's fees; and now assuming the character of plaintiff in reconvention, your respondent prays that he may have and recover judgment against the said plaintiff, the city of New Orleans, condemning her to pay the sum of four thousand dollars per month during the time the writ of injunction herein issued may be in force, and if not dissolved prior to the end of the lease, that the said city be condemned to pay the sum of one hundred and forty thousand dollars with all costs.

And he further prays this cause may be tried by a jury of his country, and for general relief.

WOOLDRIDGE & THOMAS,
Attorneys.

169 *Order.*

Let this answer and reconventional demand be filed, and a trial by jury granted as prayed for.

New Orleans, 21st Dec., 1871.

HENRY C. DIBBLE, *Judge.*

Citation.

State of Louisiana, eighth district court for the parish of Orleans, in the city of New Orleans.

CITY OF NEW ORLEANS
vs.
E. T. RIGNEY. } No. 4321.

170 Hon. B. F. FLANDERS, *Mayor of New Orleans:*

You are hereby summoned to comply with the demand contained in the answer and reconventional demand of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the honorable Henry C. Dibble, judge of the said court, the 21st day of December, in the year of our Lord, 1871.

[SEAL.] ROB'T LYNNE, *D'y Clk.*

Sheriff's return to citation.

Filed Dec. 27, 1871.

ROB'T LYNNE, *D'y Clk.*

171 Filed March 20th, 1873.

JOHN BURKE, *Clk.*

Received Dec. 22nd, 1871, and on the 23rd of same month and year served copy of within citation and accompanying answer and reconventional demand on city of New Orleans by personal service on B. F. Flanders, mayor of said city. Returned same day.

J. H. MEILLEUR, *D'y Sheriff.*

Sh'ff's fees $2.00.

Exception.

Filed Dec. 30th, 1871.

ROB'T LYNNE, *D'y Clk.*

Filed March 20th, 1873.

JNO. BURKE, *Clerk.*

172 8th district court for the parish of Orleans.

CITY OF NEW ORLEANS
vs.
E. J. RIGNEY. } No. 4321.

Now comes before the court the city of New Orleans, by Geo. S. Lacey, city attorney, and except to the demand in reconvention set up by the defendant.

Shows the court that said demand is too general in its character, and unless the items are more explicitly set forth, plaintiff will be unable to shape his defence, wherefore she prays that this exception be maintained, and that defendant's demand in reconvention be dismissed at his cost.

H. H. WALSH, *Ass't Att'y.*

173 *Affidavit and motion to produce books, papers, &c., &c.*

Filed Jan'y 4th, 1872.

ROB'T LYNNE, *D'y Clk.*

Filed March 20th, 1873.

JNO. BURKE, *Clk.*

8th district court, parish of Orleans.

CITY OF NEW ORLEANS
vs.
EDWARD J. RIGNEY. } 4321.

BENJAMIN F. FLANDERS, mayor of the city of New Orleans, being duly sworn, doth depose and say:

That from about the 9th of November, 1869, to about the 7th
174 day of December, 1871, in and by virtue of a certain contract entered into between the city of New Orleans, defendant, and E. J. Rigney, by act passed before John Tabor, notary public of the parish of Jefferson, the said Rigney has received and collected, under said contract for wharf or levee dues and otherwise, a large sum of money amounting to not less than forty-six hundred dollars; that certain books and papers in the possession of said Rigney, and on which he kept an account of his receipts and disbursements connected with the aforesaid contract, and the costs and expenses appertaining to the business covered by the same, it will be shown that the revenues and receipts for wharfage or levee dues collected by him, now claimed herein by plaintiff, amounts to forty-six hundred dollars, and the production of said books and papers into court are necessary to enable the city of New
175 Orleans to prepare for the trial and maintain the allegations of her petitioners.

Further, this deponent saith that he is unable to describe the books and papers mentioned herein in a more definite or precise manner.

BENJ. F. FLANDERS, *Mayor.*

Sworn to and subscribed before me this 3rd day of January, 1872.
[SEAL.]
W. P. EVANS,
Second Justice of the Peace, Parish of Orleans.

On motion of H. H. Walsh, assistant attorney, and on filing the annexed affidavit, and upon further suggesting that it is necessary that the books, papers, and ct. described in the foregoing affidavit should
176 be produced into court before the trial of this cause:

It is ordered that said books and papers be brought into court and produced into court on the 6th day of January, 1872; and that said defendant, Edward J. Rigney, be served with a copy of this order.

Subpœna duces tecum.

State of Louisiana, eighth district court for the parish of Orleans.

CITY OF NEW ORLEANS
vs.
EDWARD J. RIGNEY. } No. 4321.

To E. J. RIGNEY:

177 You are hereby commanded, in the name of the eighth district court for the parish of Orleans, to bring with you and produce in open court, on the tenth day of January, 1872, at the hour of 10 a. m., to be uced in evidence at the trial of the above-entitled case, by the plaintiff therein, a certain contract entered into between the city of New Orleans and E. J. Rigney, passed before John Tabor, a notary republic for the parish of Jefferson. Also, certain books and papers in your possession, and on which you kept an account of the receipts and disbursements connected with the said contract; showing also the costs and expenses appertaining to the business covered by the same.

And herein you are not to fail under penalty of the law.

Witness the honorable Henry C. Dibble, judge of the said court, this fourth day of January, 1872.

178 ROB'T LYNNE,
Dep'y Clerk.

Sheriff's return to subpœna ducas tecum.

Filed 6th January, 1872.

ROB'T LYNNE,
D'y Clk.

Filed 20th March, 1873.

JOHN BURKE, *Clk.*

Received Jan'y 3rd, 1872, and after due and diligent search and inquiry, I was credibly informed at the First National Bank of Louisiana that E. J. Rigney, defendant therein, is sick and has not been at the bank for weeks. Being unable to ascertain where he resides, therefore was unable to make service hereof.

179 Returned Jan'y 5th, 1872.

J. MEILLEUR, *D'y Sh'ff.*

Minutes, January 27th, 1872.—Continuance.

CITY OF NEW ORLEANS
vs.
E. J. RIGNEY. } No. 4327.

This case, fixed for this day for trial by jury, was ordered to be continued till Friday, February 2nd, 1872, at 10 o'clock a. m.

Filed March 20th, 1873.

JOHN BURKE, *Clk.*

Minutes, Feb. 2nd, 1872.—Continuance.

180 CITY OF NEW ORLEANS
vs.
E. J. RIGNEY. } No. 4327.

This case, fixed for this day for trial by jury, was ordered to be continued till to-morrow, Feb. 3rd, 1872, at 10 o'clock a. m.
Filed March 20th, 1873.

JNO. BURKE, *Cl'k.*

Minutes, Feb. 3rd, 1872.—Continuance.

CITY OF NEW ORLEANS
vs.
E. J. RIGNEY. } No. 4321.

181 This case, continued till this day for trial by jury, was, owing to the illness of one of the counsel engaged, ordered to be continued till Monday, Feb. 5th, 1872, 10 o'clock a. m.
Filed March 3rd, 1873.

JOHN BURKE, *Cl'k.*

Minutes, February 5th, 1872.—Swearing and empanelling jury.

CITY OF NEW ORLEANS
vs.
E. J. RIGNEY. } No. 4321.

This case, continued to this day for trial by jury, came on. Present: H. H. Walsh, ass't city att'y, for plaintiff. Present: Wooldridge & Thomas, for defendant.

182 The following-named persons were drawn from the regular panel of jurors, called to the book, and sworn to try the case:

1. W'M SOUMERS.
2. DAVID JOHNSON.
3. JNO. K. RAYBURN.
4. ANTHONY A. FLYNN.
5. ADAM GRASER.
6. FRANK ISIDORE.
7. THO'S MANNING.
8. H. MAXENT.
9. FRED. HATLING.
10. FRANKLIN PETTIWAY.
11. HYPOLITE REY.
12. J. N. BELL.

The jury being complete, the trial of the case was proceeded with; when, after hearing pleadings and evidence, it is ordered that this case be continued till to-morrow, February 6th, 1872, at eleven o'clock a. m., and that the jurors empanelled in the case be discharged till that hour.
Filed March 20th, 1873.

JOHN BURKE, *Cl'k.*

183 Eighth district court.

CITY OF NEW ORLEANS
vs.
E. J. RIGNEY. } No. 4321.

Note of evidence and testimony.

Filed Feb'y 5th, 1872.

O. M. TENNISON, *D'y Clerk.*

Filed March 20th, 1873.

JNO. BURKE, *Cl'k.*

Defendant files a return to subpœna duces tecum. Plaintiff offers in evidence the contract of sale of the city of Jefferson to E. J. Rigney of levee dues, dated November 9th, 1869, already filed in this suit the 7th day of November, 1871.

184 A. HERO, jr., sworn for plaintiff.

Q. You are a notary?

A. I am.

Q. Did you protest the note of Rigney?

A. Yes, sir; this here is a true copy of the one on file in the office.

(Plaintiff offers in evidence this note and protest marked P, now filed, and it is admitted that the signature to the note is genuine.)

Q. Look at that paper and see whether you made the demand and presented Rigney with these notes.

A. Yes, sir; (being shown the tender marked X, filed Dec. 7th, 1871.)

Cross-examined:

Q. Are you the notary for any of the banks?

A. Yes.

185 Q. Explain to the jury if it is not the custom and the habits of the banks not to give you their paper until after 3 o'clock.

A. It is the custom, except for exchange paper; city paper they give us at 3 o'clock.

Q. This is city paper?

A. Yes.

Q. That is, the banks, as a usual thing, do not turn over their paper until after 3 o'clock?

A. Yes.

Q. Do not banks always, prior to maturity, send out notices to the depositor?

A. I think the custom is so, when they can find them.

Q. They send notices that his note is due on such and such a day?

A. Yes; if they can find the man.

Q. Rigney is a man easily found?

186 A. I think not. His father is, but he is not. He was very hard to find.

Q. Was he not employed in the bank?

A. Yes.

Q. You knew his father?

A. Yes.

Q. He was an officer in an insurance company?

A. Yes.

Q. Did you know that by calling on his father you could find out where his son was?

A. I did not know he was his son.

Q. You did not present the note yourself, but by deputy?

A. I tried to find him, and then turned it over to a deputy.

Q. When did you receive this?

A. At 3 o'clock.

Q. You went and hunted for Rigney and could not find him?

187 A. Yes.

Q. How long did you search?

A. I went to look for Mr. Walsh to find out about it. I went up to Walsh's house, Jno. A. Walsh, and then, somehow or other, I sent my young man, Casey, and I understood that the man was at the Louisiana State Bank.

Q. You got the note at 3 o'clock?

A. A little before 3 o'clock; it was about then, it was so near to me. We often get them before 3 o'clock when they know it will not be paid.

Q. Then you went to Walsh's house and did not find him?

A. Yes.

Q. You did not receive all the notes that you tendered back on the day of the protest?

188 A. The day of the protest is one thing, and the day of the tender another.

Q. When did you receive these notes?

A. I received these notes, to be tendered to Walsh, on the 2nd or 3rd of December. They were brought to the office by Mr. Burke, an employee of the city hall.

Q. This is dated on the 5th.

A. It was between the 1st and the 5th that the notes were brought to me to be tendered back to Rigney. There was no instruction then, but afterwards he, Burke, called and told me to make a tender.

Q. Tell the jury how it happened that you called at Walsh's house in order to make inquiry with regard to Mr. Rigney.

A. Because, like a good many cases, there is one person the

189 figure-head and another the actual party.

Q. That fact was communicated to you from the city hall?

A. No, sir; I understood that from hearsay.

Q. You were cognizant of the fact that the real party who paid notes was Walsh?

A. Yes.

Q. Didn't you learn that Walsh at that time was across the lake, and that his wife was sick?

A. No, sir; he came to my office the next day after the protest.

Q. Did he not come the next day to pay it?

A. Yes, sir; he said he did.

Q. Didn't he say, "I want to pay it?"

A. He said he wanted to know where that note was, to pay it.

Q. And you did not have it?

190 A. Of course I didn't. The custom is always to return the note the next morning at 9 o'clock to the party who gives it, and, consequently, I did not have the note. I had returned it to the city hall before 9 o'clock. All notaries do this. The first note to be protested was given to me by Chadwick, or somebody in the finance department. The next notes for tender came to me through the hands of Burke, deputy clerk in the city attorney's office. It was out then, and Lacey came then, on the 4th, and gave the same instructions, that he wanted an act of tender.

Q. Is it not a very common thing in the city when you call on a party after three o'clock—after bank hours—to leave it

191 with him, and call in the morning?

A. No, sir; not after 3 o'clock.

Q. I have seen it a thousand times.

A. On a draft brought in before three o'clock they will leave it till evening.

Q. You do not practice notarial business as others?

A. I practice it. They go rather on the other sharp dodge.

Q. What is the difference between a draft and a note?

A. A draft may be left, and instructions may be left in regard to it.

Q. Is there any difference between a matured sight-draft and a note?

A. No, sir; and I would not leave it till later than six o'clock.

Q. You will change your mind some of these days.

192 A. All right.

Re-examined:

Q. Is this Carey your authorized deputy?

A. Yes, sir.

Q. You did not receive this note from the bank?

A. No, sir. The city keeps its own notes at the city hall, and sends them as they mature.

Cross-examined:

Q. Can you state to the jury what hour your deputy presented the note?

A. There is the date.

Q. But can you state it?

A. He left the office at a certain hour and came back at a certain hour.

Q. At what hour did he leave your office?

193 A. Near four o'clock.

Re-examined:

Q. When this note was given to you to be protested, did you know any one except Rigney?

A. That was the only one I knew from the party who gave it to me; but from hearsay I had known a long time that Walsh was the real party.

Q. You were not protesting Mr. Walsh?

A. Not at all; I protested that note.

Q. You have been a notary for some time in this city?

A. Since 1865, and in the notary business since the beginning of 1856.

Q. You have had a pretty large experience?

194 I have the name of being one of the biggest ones in the city.

Q. You are custodian of the records?

A. Of all the records except of those notaries now alive.

Cross-examined:

Q. You are called upon to give copies of these daily?

A. Yes, sir.

Q. You have frequently, in your capacity as notary, been called upon to write contracts of cases?

A. Yes; that comes in my business.

Q. Often?

A. Pretty much in my line where it involves anything of importance, such as a lease is generally made before a notary.

195 Q. Have you ever known an instance when it was asserted that the failure to pay a note on the very day it was due—a rent-note—that this would operate as a cessation of the lease?

A. No, sir.

(Defendant has no objection to the introduction of the document marked X, simply to prove rem ipsum.) Plaintiff closes.

Plaintiff closes.

E. J. RIGNEY, defendant, sworn in his own behalf.

Q. You are the defendant?

A. Yes.

Q. You have resided some time in this city?

196 A. Yes.

Q. Were you born and raised here?

A. Yes.

Q. Where were you engaged in November last?

A. In the State National Bank.

Q. How long had you been there?

A. Since January a year.

Q. Do you remember of the circumstance of the notary coming to you and presenting for payment the note due by you to the city on the 13th of November?

A. Yes, sir.

Q. What time in the day was it presented to you for payment?

A. I don't recollect the hour. It was in the afternoon near the close of the business in which I was engaged at the time.

197 Q. Explain to the jury why it was that you did not pay the note when it was presented.

A. I referred the notary to John A. Walsh, and told him that he had attended to the business previously.

(Plaintiff reserves all legal objections to the testimony.)

Q. Walsh had been attending to this matter previously?

A. Yes, sir.

Q. Who had paid the former notes to the city?

A. He had.

Q. And when they presented this note for payment, you told them to go to Walsh and get payment?

A. Yes, sir.

198 Q. Did you tell the notary, or did you use any expression that the note would never be paid?

A. No, sir.

Q. You had no such intention?

A. No, sir.

Q. Then, if I understand you, the reason it was not paid was the reference you made to Walsh?

A. Yes, sir.

Q. That is all the refusal you ever made at any time for the payment of these notes?

A. Yes, sir.

Q. Was any demand ever made on you for the payment of this note?

A. No, sir.

Q. And you never refused to pay only in that way?

199 A. Only I told the notary to go to Walsh.

Cross-examined:

Q. Who presented this note for payment?

A. I don't know who it was. I returned it to him, and said Walsh attended to this business.

Q. Was that all you did?

A. That is all I remember.

Q. You did not tell him that you would not or could not pay it?

A. No, sir.

Q. Didn't you refuse to pay it?

A. Only in the way I have explained.

Q. You signed that note?

A. Yes, sir.

Q. It was given for the sale of these revenues?

A. Yes.

200 Q. As described in this contract?

A. Yes.

Re-examined:

Q. You say that Walsh had attended to all that contract?

A. Yes.

Q. You never took any active part in it?

A. No, sir.

Q. And he had gone to the city to pay these notes?

A. Yes, sir; he had my power of attorney.

Q. And his acts you regarded as yours?

A. Yes, sir.

Q. It was he who collected the revenues of the wharves?

A. Yes, sir.

201 D. M. CAREY sworn for defendant.

Q. Where were you employed in November last?

A. Since the 8th of November I have been in the employ of John A. Walsh.

Q. Were you so on the 13th of November?

A. Yes.

Q. Do you remember anything about a note of Rigney's that fell due that day to the city of New Orleans for which this suit was brought?

202 A. I have no knowledge when the note was due. I remember a young man coming to the office and asking where Rigney could be found, and I, through mistake, told him at the Atlantic Insurance Company's office, where the father of E. J. Rigney was. He did not show me the note, only the signature.

Q. Do you remember whether Walsh was in the office that day?

A. He might have been in the morning, but he was not there at that particular time.

Q. Do you remember where he was at that time?

A. No, sir; I do not remember. Possibly I might have found him.

Q. What do you know about the offer to pay that note the following day?

203 A. I remember distinctly, on the 14th, I went to the office of the administrator of finance and asked whether Mr. Chadwick would receive city certificate of indebtedness in payment of the note.

Q. You were not present when the money was tendered for that note?

A. No, sir. I inquired of Chadwick, and he told me to see Mr. Walton, who at that time was in the council.

Q. That was on the 14th?

A. Yes.

Q. I suppose you know nothing of the contract itself?

A. No, sir.

PATRICK HERMAN sworn for defendant.

204 Q. You are the endorser on this note sued on?

A. Yes, sir.

Q. Did you receive a notice of the protest?

A. No, sir; none except on the 14th of November, I met the notary on Carondelet street, and he told me he had sent a protest to my house, without making any demand. I then went to Rigney at once to see about the note, and he told me the money was ready for payment, and

when I went out of the bank I met Walsh on the street, and we went up and demanded the note of Mr. Hero.

Q. You and Walsh went to Mr. Hero's office?

205 A. Yes, and asked for that note. Hero had not the note. We then went into the city hall, about eleven o'clock, and he had not the note.

Q. Who is Chadwick?

A. Assistant administrator of finance. He did not have it, and he said he would see Walton when he came down-stairs. Chadwick said he had not the note in his possession. John A. Walsh and I went back between two or three o'clock, and I offered Chadwick the money for the note, $1,400, in United States Treasury notes. I offered him the amount of the note, interest and everything, and Chadwick promptly re-

206 fused to accept it.

Q. When you went there in the morning at eleven o'clock, Walton, the administrator of finance, was not in the office?

A. He was up-stairs.

Q. But his deputy, Chadwick, told you that he did not have the note?

A. Yes; he said he had not the note in his possession. We did not see Walton then; we came back again.

Q. Then, when you came back, Chadwick told you what?

A. That he could not receive the money for the note; that he was instructed not to receive the money.

207 Q. Did he say who gave those instructions?

A. I don't know whether it was the city attorney or somebody else. Either the city-attorney, or Walton; I think it was the city attorney. I know that he mentioned some name, and that he was instructed by this man not to receive the money.

Q. Do you know what this contract is that the city of Jefferson entered into with Rigney?

A. I could not state exactly, because I am not intimately acquainted up there.

Q. Can you give a general idea of what the front of that river

208 is up there?

A. Two or three miles, I believe.

Q Can you give an approximate idea what the lease is worth per year for the collection of these revenues?

A. I don't know that I could; but I would risk eight or ten thousand dollars a year on it myself.

I. W. DAVIS, sworn for defendant.

Q. What is your business?

A. Real-estate broker.

Q. Are you agent for the renting of real estate?

A. Yes, sir; and have been for the last two years or two years and a half.

209 Q. You are called upon to make leases for parties?

A. Frequently; it is part of my business.

Q. Have you ever known an instance where a landlord has claimed the cancellation of a lease because one of the rent-notes went to protest?

A. Not simply on that ground.

Q. You know nothing of this case?

A. Nothing at all.

JOHN A. WALSH, sworn for defendant.

Q. You know E. J. Rigney?

A. Yes, sir.

Q. Do you know anything about a contract he entered into
210 with the city of Jefferson—the late city of Jefferson—relative to the collection of the rents and revenues of the river-front?

A. Yes, sir; he entered into a contract with the city of Jefferson on the 9th of November, 1869.

Q. You have seen that contract?

A. I have seen it.

Q. You are familiar with the terms and conditions of it?

A. Perfectly.

Q. You had something to do with the managing of it?

A. Yes, sir; I paid all the notes, acted for Mr. Rigney in paying the notes, and in superintending the management. I have had full control of it.

211 Q. You have been the managing party and Rigney has had nothing to do with it?

A. Exactly.

Q. You collected the rents and revenues?

A. Yes.

Q. And you paid the notes?

A. Yes, sir; everything except the first payments of cash.

Q. How many notes did you pay?

A. Two or three, probably three; the notes were all paid up to the time of the one that fell due on the 12th of November, 1871. I think I paid three.

Q. To whom did you pay these notes?

A. To Chadwick, a deputy of the administration of finance.

212 Q. One fell due on the 9th and 12th of April?

A. April, I think, 1870, the first one, and the other some months afterwards.

Q. And the last one?

A. Six months afterwards, in April or May, 1871. These were all paid at maturity on presentation.

Q. Were you ready, and able, and willing to pay the note that fell due on the 12th of November, 1871?

A. Yes, sir; perfectly ready and able to pay it.

Q. It was your intention that it should be paid?

A. Perfectly; as fully as any of the others.

Q. State how it was that the note got protested.

A. The note fell due according to the contract on the 9th and
213 12th of November. The 12th of November was a Sunday—a dies non—and under the new laws, the note was payable on Monday. I had the note fixed in my mind for the 12th and 15th. I had received no notice of the note, but I was aware it was maturing. The 13th was Monday, and I received no notice whatever from the city administrator. Monday being a very rainy day and wet, I went over to Gretna, and my machinery over there was in bad order. I remained there till late at night. On the morning of the 14th between ten and eleven o'clock,
I got to the office and found a communication from the adminis-
214 trator of finance, dated the 13th, that the note was due that day, the 13th. I referred to my books, and found that it was correct; that the note was due that day, the 13th. I asked my clerk, Mr. Carey, why he had not brought the note to me. He said that the note did not get there till that morning, the 14th, and he did not know the

contents of it, and where to find me. I then told him to go to the administrator of finance, and ask him how much he would receive of that note in certificates of indebtedness. I had noticed an ordinance that a certain percentage was payable in certificates of indebtedness. Chadwick told him he could not give any answer, and told him to come back at one o'clock. He then went back again, and Walton had not
215 yet come in. I then, after waiting half an hour or so, went to Chadwick, and asked him how it was that I had not been notified of the maturity of this note. Chadwick replied that he himself was not aware of the maturity of the note; it was on the 13th, late in the day; that he could not give me the notice, not knowing it himself. I then proffered him the money, asking him at the same time how much he would take in certificates of indebtedness. I offered him a check, and he said he could not receive it. I asked him why, and he said those were his instructions. I then went to the bank, and as I came back I saw Mr. Hernon, the endorser, and asked him to come in with me
216 and witness the tender, and to tender it as endorser. He had not been notified of the protest. I then tendered $1,400 **, which was more than the amount of the note, to Mr. Chadwick, and he said his instructions were not to receive it. I then said I thought it was the intention to break the contract. Hernon then tendered him the money, too, and he refused to take it. He said he was instructed not to take the money from anybody.

Q. Did he give any particular reason for not reciving the money?

A. None whatever. I asked him whether his objection was based upon the fact that the money was not paid the day before. He
217 said it might be, but it was not a matter of his judgment. He did not state whether he had the note or not. I then went to Hernan, and he advised me to tender the money, and said that the note was not in his possession; and under his instructions I brought the money there. Otherwise I would have brought a check.

Q. You desired to know whether they would take any part in certificates?

A. Yes; the city was receiving a certain percentage in certificates; but I was perfectly willing to pay in money, and did tender them all the money.

Q. Were they not aware at that office that you were the payee?

218 A. Yes, sir; they had always notified me before that.

Q. They gave you similar notices as the banks?

A. No, not as fully. I asked Chadwick why he had not put the notes in the hands of the fiscal agent, and I would then get the usual bank-notices; but they preferred to keep them. The Bank of New Orleans was the fiscal agent.

Q. Then there was never on your part any sort of a refusal to pay it?

A. None whatever.

Q. Would there have been any if it had been presented on the 13th?

A. No.

Q. It is a valuable contract?

A. Yes, sir; and I was aware that the city was desirous of
219 breaking the contract. I was aware they wanted it, and it made me cautious, and had it not been for an accident to the machinery on the other side of the river, I should have been at my office to receive the note.

Q. In this petition it is claimed that this contract was worth $25,000** net profit, for the term of two years. Have you ever kept any regular books concerning this contract?

A. No, sir; I have never kept any regular books. I have kept memoranda. I have simply collected all there was to collect. Everything I have received, less the payments made to the city, was so much profit.

220 Q. It is impossible for you to tell?

A. Yes; except by an approximate guess.

Q. Tell the jury what is your occupation.

A. That would be difficult. I would be glad for the jury to inform me. I have been called sometimes a politician; sometimes a contractor; and sometimes a speculator. My object is to make money.

Q. You handle considerable amounts?

A. Yes, sir; and keep all I can.

Q. Tell us the value of this contract.

A. I don't think it would be worth $25,000 in two years.

Q. What is the condition now; is it improving or *or* otherwise,

221 in the business being done?

A. The business being done on the river front is increasing; because there are a great many more coal-boats and flat-boats coming there.

Q. Since the annexation to the city of New Orleans of that corporation, it has had that effect?

A. The most effect was the passage of the slaughter-house bill. When I first got possession the stock-landing alone paid a thousand dollars a year; but on the passage of the slaughter-house act, and the removal of the slaughter-house, it depreciated. Then after the building of the Chattanooga railroad and the Morgan railroad, the flat-boats and

222 coal-boats were forced up there. It is now commencing to recuperate from what it lost by the removal of the slaughter-house landing.

Q. This lease has till 1874 to run?

A. Yes, sir; it expires the 9th of November, 1874.

Q. Is not the business for this year better than it was for the last?

A. Yes, sir.

Q. And a fair prospect for it increasing constantly?

A. Yes, sir; very fair. There is more lumber coming to this market. There are three saw-mills there, and they are receiving more than they ever did, and the stock of coal coming here is very large, and this season it is not adequate.

223 Q. You have been enjoined from proceeding in the collection of the revenues?

A. Yes, sir.

Q. What time was the writ served on you?

A. It was served on Rigney.

Q. And since then you have done what?

A. Nothing at all. The city of New Orleans has put a collector there, and I have discharged Rigney's collector.

Q. What effect has this injunction had?

A. A very disastrous one. It has stopped all the business as far as the contract is concerned, and there is no collection of revenues

224 for him. The city has collected the revenues. I have no idea how the city collects.

Q. You have a number of suits?

A. Yes; several. One against the Ocean Saw-Mill for $2,000. I have some minor suits, but I have been enjoined from collecting or prosecuting or attempting to collect any revenues, and I have obeyed, of course.

Q. Do you think that for the coming two or three years that it will amount to as much as for the past two years?

A. I think it will be more. I think that the object of the city in getting the river front is to bring up the flat-boats, and I have not been opposed to selling to the city, and I presume that if the city did it she would make improvements there.

225 Q. Do you think the revenues will increase eight or ten thousand dollars a year?

A. Yes, sir; judging from the past that would be the profit on the lease.

Q. What would you put it at, judging from what it has been and what you have received?

A. The river front has a speculative value. I would much prefer holding it for the last year. I would as soon have it for the year ending November 9th, 1874, than for all the three years previous. My opinion has been that the franchise is growing more valuable every day.

226 Q. What do you think that Rigney, as a financial transaction, could afford to take for it?

A. I have advised him to sell for fifty or sixty thousand dollars to the city of New Orleans.

Q. Over and above the notes he gave?

A. Yes, sir. I advised him if the city wanted this river front; they seemed to think that the contract was valid.

Q. Whom do you mean by they?

A. I think Flanders was of opinion that it was illegal, and that the city ought to be the owner of the whole river front. Flanders was speaking of it in a business way. Boats came there after paying wharfage here, and then lauded up there, and my collector would mulct
227 them in seven dollars and a half, and they thought it hard. At the same time Rigney had the contract by right of which he claimed the collection from the boats. Flanders acknowledged that, and instructed the city wharfinger to deduct seven dollars and a half from the wharfage here. All of which had a tendency to make Flanders think that it would be advisable for the city to get the whole river front. He never said that officially.

Q. Was there never any claim set up in a court of justice?

A. The city has never alleged it in any petition that the contract was not a legal one.

228 Q. What amount of damages do you think Rigney suffers by the issuance of this injunction that has already matured?

A. If the injunction was dissolved to-day I don't believe he could make a collection. It has only been by the exercise of a good deal of diplomacy and finesse that we have got along. If the injunction was dissolved to-morrow, it would be a great many months before Rigney could collect anything; because the city's action has had a tendency to throw doubt over the right of Rigney to collect, and they think that the city would have no right to collect up there. The first act of the city was to send up a collector there. I remonstrated with
229 General West, the administrator of improvements, and I called his attention to the fact that Rigney had a lease and asked him to withdraw his collector, which he did. That was immediately after the consolidation.

Q. And that act itself had a damaging influence?

A. Yes; had it not been for the fact that most of those persons knew me, I don't believe we could have collected anything without suits. As it is, we have many suits pending.

Q. What amount of damage do you think Rigney has suffered by the issuance of this injunction, including court fees and lawyer's fees?

A. I think, considering that the city is very much given to this
230 way of acting, and that they seem determined to throw obstacles in the way, I think Rigney would be fully justified in sueing for forty or fifty thousand dollars damages. An individual would not have adopted that course, but the city of New Orleans does not give bonds, no matter how much money is lost by it. Considering that fact, I certainly think Rigney ought to bring suit for fifty thousand dollars damages, including attorneys' fees and costs of court.

Q. You spoke something with regard to the city desiring to break up this contract; whom did you refer to?

A. I had reference to the action of Administrator West. He placed a collector there in the face of this contract.

231 Q. You spoke of a desire on the part of these gentlemen at the city hall to annull this contract?

A. I don't refer to any particular person. It is merely what a man hears. When a man is a contractor he soon gets information. The administrators seemed to be under the impression that this contract was something like that Romain contract for shelling streets. They seemed to be under the impression that this contract was passed at the same time with that, but it is entirely erroneous. The city of New Orleans has never paid me any debt contacted by the city of Jefferson without litigation.

232 Q. Do you think any less sum than $25,000 would compensate for suing out this injunction?

A. I certainly should not think it would. If it was an individual who brought it, he would expect to pay nothing less than that.

Q. Leaving out malice or anything of that kind?

A. In my judgment he is damaged to the extent of $50,000.

Q. Can you assert $25,000 to be the figure at which he is damaged?

A. I should say $25,000 would be the very least. I should not think that with anything less than that he would stand any show with his contract.

233 Cross-examined:

Q. When did this conversation between yourself and Mr. Chadwick occur, in relation to the protest of this note and your offer?

A. On the 14th of November.

Q. I understood you to say you were perfectly familiar with the contract?

A. Yes, sir.

Q. Don't you know that the former notes fell due in May and November?

A. Yes, sir.

Q. Didn't you pay the note that fell due in the November preceding this?

A. Yes, sir.

Q. On what day did you pay it?

234 A. On the 12th of November, after being notified.

Q. You, then, were aware that the next note falling due would be on the 12th?

A. I had it fixed in my mind that it would fall due on the 12th and 15th.

Q. You say you were perfectly familiar with it. Did you pay the note on the 12th of November, 1870?

A. Yes, sir.

Q. Didn't you know that the other note fell due on the 12th of November, 1871?

A. If I did think it I would have paid it. I did not remember it. I had it fixed in my mind that the note matured on the 12th
235 and 15th of November. Prior to that time I had always got notice. Had I not been so much engaged on the maturity of this note, I would not have required a notice.

Q. You said that you feared that the city would want to annul this contract?

A. Yes, sir.

Q. What interest did you have in that contract?

A. I acted for Mr. Rigney as agent.

Q. Had you any other interest?

A. No, sir.

Q. Did you ever buy from Rigney his contract?

A. No, sir; I talked with him once about buying it.

Q. How much money had he derived from the revenues of this contract?

236 A. Well, sir, I think there has been collected for that river front nigh about eight or ten thousand dollars a year; and some of that is pending in litigation. I looked upon it as simply a matter of time to collect that—probably $1,500 or $2,000.

Q. Were you not notified from the administrator's office that this note would mature on the 12th of November?

A. No, sir.

Q. You received no notice whatever?

A. None whatever. I received a communication on the morning of the 14th.

Q. You say there are some matters now in litigation, and you have been enjoined from proceeding?

A. Yes, sir.

Q. What injunction do you refer to?

237 A. To the injunction against E. J. Rigney, issued in this suit.

Q. I understood you to say that the 12th of November fell on Sunday?

A. I think it did.

E. H. CHADWICK, sworn for defendant:

Q. What is your present occupation?

A. Deputy clerk of the administrator of finance.

Q. Were you holding that position in November last?

A. Yes.

Q. Do you remember the circumstances of a note falling due
238 which the city held, given by E. J. Rigney to the late city of Jefferson, for some eleven hundred dollars, and falling due in November last?

A. Yes, sir.

Q. The city acquired that note by succeeding to the rights of the city of Jefferson?

A. Yes, sir. It was part of the assets of the city of Jefferson turned over.

Q. Was the money ever tendered to you for the note?

A. Yes, sir; after the protest.

Q. Will you be kind enough to state when it was?

A. It was the day after the protest of the note.

Q. Who tendered it to you?
A. Walsh, in the presence of Hernan.
Q. Why did you not receive it?
A. I was instructed not to receive it, as the note had gone to protest.
239 Who instructed you?
A. The administrator of finance. Mr. Walton brought it to me from the mayor's office, and he told me to decline accepting this money for the note.
Q. Did he give any reason?
A. No, sir.
Q. And you complied with his order?
A. Yes, sir.
Q. You had the note under your control?
A. I don't know whether it had not gone up to the city attorney, but it was in the city hall under the control of the city government.
Q. Didn't he tell you he wanted to bring a lawsuit to break that contract?
A. I don't know. I can't say; but the intention is very evident
240 —here is the suit for it.
Q. Do you know when these notes went out of your office?
A. No, sir. It was within twenty-four or forty-eight hours after the protest. We are in the habit of sending everything out soon.
Q. Were you in the habit of receiving notes due to the city?
A. I don't know.
Q. Did you ever before refuse to take money offered?
A. Yes, sir.
Q. When you had a written obligation?
A. I don't know.
Q. The city tells the markets?
A. Yes, sir.
Q. There are no notes about that?
A. No, sir.
241 Q. There are some matters about the affairs where the city takes notes?
A. Formerly, but now there are only one or two.
Q. You have been some time in the city-hall?
A. Yes, sir; I went there in April, 1870, and previous to that I went there in October, 1862, and remained till October, 1866.
Q. You, have, then, considerable experience?
A. Yes, sir; some.
Q. Formerly the city took notes for the payment of the markets when it sold them?
A. Yes, sir.
Q. Did you ever know an instance where you refused to take some of these notes, because it was not paid on the very day it fell due?
242 A. I have an indistinct recollection that I did, but I could not swear to it.
Q. It is pretty indistinct?
A. Well, never mind how indistinct, I could not swear to it.

Edw. J. Rigney's note.

$1,150.] CITY OF JEFFERSON, *Nov. 9th*, '69.
Two years after date I promise to pay to my order the sum of eleven

hundred and fifty dollars, with interest at the rate of eight per cent. from date until final payment. Value received.

EDW. J. RIGNEY.

(Endorsed:) Ne varietur. John Tabor, notary public, Nov. 9th, '69. Edw. J. Rigney, P. Hernan.

243 *Protest.—Edward J. Rigney's note.*

Filed Feb'y 5th, 1872.

O. M. TENNISON, *D'y Clk.*

Filed March 20th, 1873.

JOHN BURKE, *Clk.*

STATE OF LOUISIANA,
Parish of Orleans:

By this public instrument of protest be it known that, on this thirteenth day of November, in the year one thousand eight hundred and seventy-one, at the request of John S. Walton, administrator of finance of the city of New Orleans, and as such holder of the original note, whereof a true copy is on the reverse hereof written, I, Andrew
244 Hero, jr., a notary public in and for the parish of Orleans, State of Louisiana aforesaid, duly commissioned and sworn by my deputy, Paul A. Conand, presented said note to Edw. J. Rigney, the drawer, at his place of business in this city, and demanded payment thereof, and was by him answered that he would not pay the same. The United States internal-revenue tax hereon has been paid, as per a stamp thereof for the sum of twenty-five cents, affixed to the original protest and cancelled.

Whereupon I, the said notary, at the request aforesaid, did protest and by these presents do publicly and solemnly protest as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges,
245 and interest, suffered or to be suffered for want of payment of the said note.

This done and protested in the presence of Messrs Paul A. Conand and George Cenas, both of this city, witnesses who have signed with me, the notary.

In testimony whereof, I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

ANDREW HERO, Jr.,
Notary Public.

$1,150.] CITY OF JEFFERSON, *Nov. 9th*, '69.

Two years after date I promise to pay to my order the sum of eleven hundred and fifty dollars, with interest at the rate of eight per
246 cent. from date until final payment. Value received.

EDW. J. RIGNEY.

(Endorsed:) Ne varietur, John Tabor, notary public, Nov. 9th, 1869. Edw. J. Rigney, P. Hernan.

Answer to supœna ducas tecum.

Filed Feb. 5th, 1872.

O. M. TENNISON, *D'y Clk.*

Filed March 20th, 1873.

JOHN BURKE, *Clk.*

CITY OF NEW ORLEANS
vs.
E. J. RIGNEY.

The defendant now comes, and in return to the writ of subpœna
247 ducas tecum served on him here in requiring him to produce on the trial of this case certain books, papers, and documents, relating to the contract sued on, says that he cannot produce them, for this reason: that he has never kept any books or accounts relating to said contract.

E. J. RIGNEY.

Sworn to and subscribed on this 5th of Feb., 1872.

O. M. TENNISON, *D'y Clerk.*

Supplemental answer discontinuing a portion of reconventional demand.

Filed Feb'y 6th, 1872.

O. M. TENNISON, *D'y Clerk.*

248 Filed March 20th, 1873.

JNO. BURKE, *Clerk.*

8th dist. court.

CITY OF NEW ORLEANS
vs.
E. J. RIGNEY.

The defendant now comes before the court, and, prior to the submitting of this cause to the jury for their determination, formally discontinues all that portion of his reconventional demand that seeks to recover damages not yet sustained, hereby reserving his right of action in that behalf to be determined in another suit, after the final disposition of this cause.

WOOLDRIDGE & THOMAS, *Att'ys.*

249 Eight dist. court.

CITY OF NEW ORLEANS
vs.
E. J. RIGNEY.
No. 4321.

Testimony.

Filed Feb'y 6th, 1872.

O. M. TENNISON, *D'y Clk.*

Filed March 20th, 1873.

JNO. BURKE, *Clerk.*

JOHN H. NEW, sworn for defendant, says:

Q. You are a member of the bar, and practising in this court?

A. Yes.

Q. You have taken a casual glance at this record?

A. Yes.

250 Q. The city sues the defendant to annul the contract, and they

claim $25,000 to have been collected. They enjoined the collection of the revenues, and they claim that for the two years we have received $25,000 *dollars*. Now, in case this injunction is set aside, what do you think would be a reasonable fee for attending to this case?

A. A thousand dollars, at least.

Q. And suppose it goes to the Supreme Court?

A. And you gain it in both courts—it is worth $2,500 then.

Judge CAZABAT sworn for defendant:

251 Q. You have heard the statement of Major New?

A. Yes, sir.

Q. You are a member of the bar?

A. Yes, sir.

Q. What do you think would be a fair fee?

A. The amount mentioned by Major New.

Q. What, one thousand dollars in this court, and fifteen hundred in the Supreme Court, if the case is gained in both courts?

A. Yes; $2,500 in both courts.

Charge to the jury.

Filed Feb'y 6th, 1872.

O. M. TENNISON, *D'y Clerk.*

252 Filed March 20th, 1873.

JNO. BURKE, *Clk.*

CITY OF NEW ORLEANS *vs.* E. J. RIGNEY. } No. 4321.

The law provides, gentlemen of the jury, that after the case has been closed by counsel and submitted to the jury, the judge shall charge the jury upon the laws applicable to the case. In this charge he is forbidden to make any reference to the facts of the case in a manner that would in any way influence the judgment of the jury. They are the sole judges of the facts, and it is improper for the judge to say anything of them whatever. You are expected, however, to re-

253 ceive the law from the judge, and the jury ought to be bound by law as given by the court. They take that law and determine whether the law applies to the facts as they have found them, and they then find their verdict.

There are two forms of bringing in a verdict. There is a general verdict and there is a special verdict. The jury may always find a general verdict; that is, they determine whether there is to be a verdict for the plaintiff, and for how much, or whether there is to be a verdict for the defendant, and, if demand has been made by him, for how much; or they may simply agree upon the facts proven, reduce them to writing, and bring in that as a special verdict, leaving to the judge to apply the law to these facts and render judgment. The jury is, however, always at liberty to bring in a verdict for plaintiff for so much, or for

254 defendant for so much, where a reconventional demand has been made by the defendant.

When you have agreed upon your verdict, it is reduced to writing and signed by one of your members who will be appointed foreman.

The pleadings in the case show that it is a suit brought by the city of New Orleans for the annulment of a contract made by the city of Jefferson before the consolidation of that city with New Orleans, for the lease of certain wharves fronting the city of Jefferson. By the act of consolidation, the city of New Orleans stepped into the shoes of the city of Jefferson, and it is bound in every way that the city of Jefferson was, and is, entit'ed to all the rights and privileges of the city of Jefferson before the consolidation.

255 This suit is based upon the allegation that one of the notes given by the lessee of these wharves was not paid after maturity, and that therefore the contract is null and void, and the city sues for the annulment of the lease and the recovery of the amount said to have been collected by the lessee, from the time of taking the lease up to the time of bringing the suit, $25,000.

Art. 2563 of the code provides that, "If, at the time of the sale of immovables, it has been stipulated that, for want of payment of the price within the terms agreed on, the sale should be of right dissolved, the buyer may, nevertheless, make payment after the expiration of the term as long *as long* as he has not been placed in a state of default by a judicial demand; but after that demand the judge can grant him no delay."

256 It seems to me that by the language of this article, if the defendant, though he did not pay the money at maturity, tendered payment before suit was brought against him, that he had a right to make such payment, and the city ought to have received the money. I do not see how any other construction can be placed on that article.

Article 2562 of the code provides: "The dissolution of the sale of immovables is summarily awarded when there is danger that the seller may lose the price and the thing itself. If that danger does not exist the judge may grant to the buyer a longer or shorter time, according to circumstances, provided such term exceed not six months. This term

257 having expired without the buyer yet having paid, the judge shall cancel the sale."

It seems to me that article contemplates that when a person has bought a thing, real estate or movables, and finds he is unable to pay the price, he may bring an action setting forth the fact, and the court, at its discretion, may, upon his suit, grant a delay not exceeding six months, and if the money is not paid in that time the sale is null.

The other article provides for his right to pay the rent at any time before the seller brings suit to annul the sale, and this sale of the right of the wharves is governed by the same law as applicable to real estate.

Article 2539 of the code provides that, "When the purchaser

258 does not pay the price the seller may sue for the dissolution of the sale." Of course; but this seems to be governed by the subsequent article, which allows him to pay at any time before suit is brought.

Judgment.

State of Louisiana, eighth district court, for the parish of Orleans.

CITY OF NEW ORLEANS
vs.
ED. J. RIGNEY. } No. 4321.

259 Filed Feb'y 6th, 1872.

O. M. TENNISON, *D'y Clk.*

Filed March 20th, 1873.

JOHN BURKE, *Clk.*

This case continued to this day for trial by jury, came on:

Present, H. H. Walsh, ass't city att'y, for plaintiff, and Wooldridge and Thomas for defendant.

The roll of jurors empaneled in this case having been called, each juror answering to his name, and the jury being complete, the trial of the case was proceeded with. When, after hearing further evidence and counsel, the jury received the charge from the court, and retired to deliberate.

260 After deliberation they returned into the court, and through their foreman rendered the following verdict:

NEW ORLEANS, *Feb'y 6th*, '72.

General verdict for defendant for twenty-five hundred dollars.

(Signed) H. MAXENT, *Foreman.*

Whereupon, the court considering this verdict of the jury, and the same being in due form of law, and the court being satisfied therewith:

It is ordered, adjudged, and decreed that there be judgment in favor of the defendant, Edward J. Rigney, and against the plaintiff, the city of New Orleans, and that the said Edward J. Rigney have and recover from the said city of New Orleans the sum of twenty-five hundred dollars and cost of suit.

261 Judgment rendered February 6th, 1872, and signed Feb'y 10th, 1872.

HENRY C. DIBBLE, *Judge.*

Motion for new trial.

Filed Feb. 9th, 1872.

O. M. TENNISON, *D'y Clk.*

Filed March 20th, 1873.

JNO. BURKE, *Clerk.*

8th district court, parish of Orleans.

CITY OF NEW ORLEANS
vs.
ED. J. RIGNEY.

On motion of H. H. Walsh, it is ordered that the defendant show cause on the day Feb., 1872, why a new trial should not be granted in the above case for the reason that the verdict of this jury is

262 contrary to the law and evidence.

2nd. That the judgment of the court upon that verdict is not sufficiently explicit, and the real issues in the case are not settled.

Minutes, Feb. 9th, 1872.—*Rule discharged.*

8th district court, No. 4321.

On motion of H. H. Walsh, ass't city att'y, and for the reasons filed,

It is ordered that the defendant do show cause why a new trial should not be granted herein.

It is further ordered by the court, upon presentation of the fore-

263 going motion, that this rule be discharged and a new trial refused.

Motion for a suspensive appeal.

Filed Feb. 15th, 1872.

O. M. TENNISON, *D'y Cl'k.*

Filed March 20th, 1873.

JNO. BURKE, *Cl'k.*

8th district court, parish of Orleans.

CITY OF NEW ORLEANS
vs.
ED. J. RIGNEY.

On motion of H. H. Walsh, ass't city attorney, and on respectfully suggesting to the court that there is error in the judgment rendered in the above case; that plaintiff feels aggrieved thereby, and desires to take an appeal therefrom;

264 On further suggesting to the court, that by law the city of New Orleans is exempt from giving bond and security in such cases,

It is ordered that a suspensive appeal be granted, returnable to the honorable the supreme court of Louisiana, on the third Monday in March, A. D. 1872, and that defendant be notified of this appeal, and cited to appear and answer the same.

Note by clerk.

Eighth district court, No. 4321.

The fi. fa. which was issued in this case on June 7th, 1872, has
265 been mislaid, and after due and diligent search cannot be found among the records of the late eighth district court.

266 (Endorsed:) 2467. Superior district court. J. W. Cannon vs. City of New Orleans. Testimony offered by consent in open court, June 1st, 1872. Filed June 1st, 1872. O. N. Denison, d'y clerk. Filed March 20th, 1873. Jno. Burke, cl'k.

Clerk's office, superior district court, parish of Orleans.

I hereby certify the foregoing to be a true copy of the original document on file in the records of the superior dis't court for the parish of Orleans.

Witness my official signature and the seal of the said court this day of November, A. D. 1873.

(Signed) JOHN BURKE, *Cl'k.*

267 *Affidavit and motion to fix cause for trial.—Filed Nov'r* 20, 1873.

Supreme court, State of Louisiana.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 4777.

STATE OF LOUISIANA,
City of New Orleans:

Geo. S. Lacey, city attorney of the city of New Orleans, being duly

sworn, doth depose and say: That this case is one of serious public interest, and in which a speedy decision is desirable.

(Signed) GEO. S. LACEY.

Sworn to and subscribed before me this 20th day of November, A. D. 1873.

(Signed) JNO. M. HOWELL, *Clk S. C.*

On motion of Geo. S. Lacey, city attorney, and on filing the foregoing affidavit, it is ordered that this case be called and set for hearing by preference.

268 *Motion and order to fix cause for trial with preference.—Minutes.*

THURSDAY, *November* 20, 1873.

The court was duly opened.

Present, their honors, John T. Ludeling, chief-justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 4777.

On motion of George S. Lacey, city attorney, it is ordered by the court that this case be called and set for hearing with preference.

Document B.—Filed Dec. 17th, 1873.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 4777.

269 Supreme Court U. S. No. . December term, 18 .

Judgment.

Supreme Court of the United States. December term, 1849.

HORACE PEASE AND ABIJAH FISK, OWNERS of the steamboat Sultana, plaintiffs in error,
vs.
THE MUNICIPALITY NUMBER ONE (1) OF THE city of New Orleans. } No. 87.

In error to the supreme court of the State of Louisiana.

This cause came on to be heard on the transcript of the record from the supreme court of the State of Louisiana, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said supreme court in
270 this cause be, and the same is hereby, affirmed with costs and damages at the rate of six per centum per annum.

By a divided court, 21st May, 1850.

A true copy.

[SEAL.] (Signed) D. W. MIDDLETON,
Clerk Sup. Court U. S.

Cause submitted.—Minutes.

WEDNESDAY, *December* 17, 1873.

The court was duly opened.

Present, their honors, John T. Ludeling, chief-justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 4777.

This case was called for trial, and having heard argument from William W. King, esq., of counsel for plaintiff and appellant, and George S. Lacey, city attorney on behalf of the defendant, appellee herein,
271 the court took the same under advisement upon the briefs and papers now on file.

Opinion of the court.—Filed January 5, 1874.

J. W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 4777.

Appeal from the superior district court for the parish of Orleans.

HOWELL, *J.:*

The plaintiff has appealed from a judgment against him in a suit brought by him as master and owner of the steamer Rob't E. Lee, to enjoin the city of New Orleans from levying on the said vessel certain charges called levee dues, and to recover the amount paid by said vessel within the twelve months preceding the institution of the suit, and certain alleged damages.

372 The claim of the city for the charges against the vessel is based on the 2d art. of "An ordinance to regulate the levee dues and wharfage on ships and vessels arriving from sea, and on steamboats, flat-boats, etc., arriving at the port of New Orleans," approved Feb. 11th, 1853, and which provides, "that from and after the 1st January, 1853, the levee dues on all steamboats which shall moor or land in any part of the port of New Orleans, shall be fixed as follows: Ten cents per ton if not in port over five days, and five dollars per day after said five days shall have expired; provided, that boats arriving and departing more than once each week, shall pay only seven cents per ton each trip; and boats arriving and departing more than twice each week, shall pay only five cents per ton."

273 It is contended by plaintiff that this ordinance is in conflict with the provisions of the Federal Constitution, which give to Congress power to regulate commerce with foreign nations, among the several States, and with the Indian tribes; which declare that no vessels bound to or from one State shall be obliged to enter, clear, or pay duties in another; that no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and that no State shall without the consent of Congress lay any duty on tonnage; and also in conflict with the laws of Congress, and of this State in relation to the admission of Louisiana into the Union.

The same points, supported by the same line of argument as
274 in this, were presented in the case of The First Municipality vs. Pease et al., 2 A., 540, and were decided adversely to the position taken by the plaintiff in this case. It was there held that the authority of the municipal corporation to impose a wharfage or charge on vessels moored in the port of New Orleans, to defray the expenses of the erection and maintenance of wharves and other works necessary for the loading and unloading of vessels, and to secure a convenient access to them, is not inconsistent with any law of the State or United States, or any provision of the Federal Constitution, and that the courts will not undertake to fix any limit to the amount which the municipal authorities may exact for that purpose, the question of the extent to which this right may be exercised being purely administrative.

275 We think these views correct and strictly applicable to the case now before us. The "levee dues," under consideration, are not a "duty on tonnage," nor a regulation of or burden on commerce, nor a duty upon vessels plying between the States, within the contemplation of the Constitution of the United States, but charges as compensation for commercial facilities furnished by the city, and for which, by the common consent of mankind, compensation is paid. 9 R., 332; 9 Wheat., 235. The question of the right to impose such charges, whether under the name of wharfage or levee dues, being judicially determined, the manner and extent of its exercise are left to those to whom the management of the municipal affairs are entrusted, under their responsibility to those whom they represent. The aggregate of charges may possibly be largely in excess of the actual necessary expenses during
276 one year, and the very next be insufficient to meet. This will result from the nature of the river-banks, the action of the river current, the quality and nature of materials used, the fluctuations of commerce, and many other causes unforeseen and irregular in their operation, and all which show the impossibility of judicial control and regulation of the subject.

Being of opinion that the charges complained of are not in conflict with the provision of any fundamental or statutory law of the country, and that the policy of their imposition belongs to the consideration of another department of government, it is unnecessary for us to enquire into the other points presented in this case. We think the conclusion of the court a qua correct.

Judgment affirmed.

277 *Judgment and decree of the court.—Minutes.—Monday, January 5,* 1874.

The court was duly opened, pursuant to adjournment. Present, their honors James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices; absent, John T. Ludeling, chief-justice.

His honor Justice Howell pronounced the judgment and decree of the court in the following case:

JOHN W. CANNON
vs. } No. 4777.
CITY OF NEW ORLEANS.

On appeal from the superior district court for the parish of Orleans.
Judgment affirmed.

Certificate of the clerk.

278 UNITED STATES OF AMERICA,
Supreme Court of the State of Louisiana:

I, John Miller Howell, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing ninety-six (96) pages of printed matter, used as part of this record by consent of parties, and the written pages following thereafter, from page ninety-seven (97) to one hundred and thirty-four, (134,) inclusive, comprising the record of proceedings had in suit of John W. Cannon vs. City of New Orleans, and the pages from one hundred and thirty-five (135) to two hundred and seventy-seven, (277,) inclusive, comprising the record of proceedings in suit of Edward Rigney, contain a full, true, and complete copy of the transcript of the proceed-
279 ings had in the superior district court for the parish of Orleans, in a certain suit wherein John W. Cannon was plaintiff and The City of New Orleans was defendant; and also of all the proceedings had in this supreme court on the appeal taken by the said plaintiff, which appeal is now on files thereof under No. 4777.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this first day of May, in the year of our Lord one thousand eight hundred and seventy-four, and in the ninety-eighth year of the Independence of the United States of America.

[SEAL.] JNO. M. HOWELL, *Clerk.*

UNITED STATES OF AMERICA,
Supreme Court of the State of Louisiana:

280 I, John T. Ludeling, chief-justice of the supreme court of the State of Louisiana, do hereby certify that John Miller Howell is clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans; that the signature of John Miller Howell to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this second day of May, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] JNO. T. LUDELING,
Chief-Justice Supreme Court of Louisiana.

281 Supreme court of the State of Louisiana.

I, John Miller Howell, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the honorable John T. Ludeling is, and was at the time of signing the foregoing document, chief-justice and presiding judge of our supreme court, and that the signature affixed to the same is in the proper handwriting of him, the said judge.

In faith whereof I have hereunto set my hand, and affixed the seal of this honorable , this the second day of May, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] JNO. M. HOWELL, *Clerk S. C.*

282 Supreme court of Lousiana.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS.

To the Hon. John T. Ludeling, chief-justice of the supreme court of the State of Louisiana:

The petition of John W. Cannon respectfully represents that, on the 5th day of January, 1874, a judgment was rendered against him, which became final on the 20th day of January, 1874, in the above case, in which he claimed a right, privilege, and immunity under the Constitution and statute-laws of the United States. Petitioner alleges there is plain and manifest error in the said judgment, unless he can be relieved therefrom by a writ of error to the Supreme Court of the United States. He herewith tenders the bond required by law. Wherefore he prays for a writ of error to the Supreme Court of the United States in the said case.

WM. W. KING,
Att'y for Pet'r.

Let a writ of error issue as prayed for, on the petitioner giving bond with good & sufficient in the sum of three hundred dollars, and that the same be made returnable according to law.

March 17th, 1874.

JNO. T. LUDELING,
Chief-Justice S. C. of La.

(Indorsed:) 4777. Petition for writ of error. Supreme Court. Filed March 19th, 1874. M. P. Julian, d'y cl'k.

283 Supreme Court of the United States.

Know all men by these presents, that we, John W. Cannon and John C. Sennot, both of the State of Louisiana, are held and firmly bound unto the city of New Orleans, a municipal corporation, in the sum of three hundred dollars, to be paid to the said city of New Orleans, its successors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this the fourteenth day of March, 1874.

Whereas the above-named John W. Cannon hath prosecuted a writ of error to the Supreme Court of the United States, to reverse a jud'ment rendered on the 5th day of January, 1874, and final on the twentieth day of January, 1874, by the supreme court of the State of Louisiana, against the said Cannon, in the case of John W. Cannon against the said city of New Orleans:

Now, therefore, the condition of this obligation is such that the said John W. Cannon shall prosecute his writ of error to effect, and
284 answer all damages and costs if he shall fail to make good his plea, then this obligation to be void; otherwise the same shall be and remain in full force and effect.

J. W. CANNON. [SEAL.]
JOHN C. SINNOTT. [SEAL.]

Sealed & delivered in presence of—
WM. W. KING.

Approved this 18th, 1874.

JNO. T. LUDELING,
Chief-Justice Supreme Court of Louisiana.

(Indorsed:) 4777. Bond. Sup. Court. Filed March 19th, 1874. M. P. Julian, d'y cl'k, S. c't of La.

2841/2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions in New Orleans, Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between John W. Cannon, plaintiff, and the city of New Orleans, defendant, wherein was drawn in question the validity of a right, privilege, and immunity claimed under the Constitution and statute-laws of the United States, and the decision was against such claim, a manifest error hath happened, to the great damage of the said John W. Cannon, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 18th day of March, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.]

F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the district of Louisiana.

(Indorsed:) Supreme Court. 4777. United States circuit court. No. . John W. Cannon, plaintiff in error, versus The City of New Orleans, defendant in error. Writ of error. Filed March 19th, 1874. M. P. Julian, d'y cl'k.

285 UNITED STATES OF AMERICA,
State of Louisiana:

The President of the United States of America to the city of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at the city of Washington, in the District of Columbia, on the 2d Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, holding sessions at New Orleans, wherein John W. Cannon is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

282 Supreme court of Lousiana.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS.

To the Hon. John T. Ludeling, chief-justice of the supreme court of the State of Louisiana:

The petition of John W. Cannon respectfully represents that, on the 5th day of January, 1874, a judgment was rendered against him, which became final on the 20th day of January, 1874, in the above case, in which he claimed a right, privilege, and immunity under the Constitution and statute-laws of the United States. Petitioner alleges there is plain and manifest error in the said judgment, unless he can be relieved therefrom by a writ of error to the Supreme Court of the United States. He herewith tenders the bond required by law. Wherefore he prays for a writ of error to the Supreme Court of the United States in the said case.

WM. W. KING,
Att'y for Pet'r.

Let a writ of error issue as prayed for, on the petitioner giving bond with good & sufficient in the sum of three hundred dollars, and that the same be made returnable according to law.

March 17th, 1874.

JNO. T. LUDELING,
Chief-Justice S. C. of La.

(Indorsed:) 4777. Petition for writ of error. Supreme Court. Filed March 19th, 1874. M. P. Julian, d'y cl'k.

283 Supreme Court of the United States.

Know all men by these presents, that we, John W. Cannon and John C. Sennot, both of the State of Louisiana, are held and firmly bound unto the city of New Orleans, a municipal corporation, in the sum of three hundred dollars, to be paid to the said city of New Orleans, its successors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this the fourteenth day of March, 1874.

Whereas the above-named John W. Cannon hath prosecuted a writ of error to the Supreme Court of the United States, to reverse a judgment rendered on the 5th day of January, 1874, and final on the twentieth day of January, 1874, by the supreme court of the State of Louisiana, against the said Cannon, in the case of John W. Cannon against the said city of New Orleans:

Now, therefore, the condition of this obligation is such that the said John W. Cannon shall prosecute his writ of error to effect, and
284 answer all damages and costs if he shall fail to make good his plea, then this obligation to be void; otherwise the same shall be and remain in full force and effect.

J. W. CANNON. [SEAL.]
JOHN C. SINNOTT. [SEAL.]

Sealed & delivered in presence of—
WM. W. KING.

Approved this 18th, 1874.

JNO. T. LUDELING,
Chief-Justice Supreme Court of Louisiana.

(Indorsed:) 4777. Bond. Sup. Court. Filed March 19th, 1874. M. P. Julian, d'y cl'k, S. c't of La.

284½ UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions in New Orleans, Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between John W. Cannon, plaintiff, and the city of New Orleans, defendant, wherein was drawn in question the validity of a right, privilege, and immunity claimed under the Constitution and statute-laws of the United States, and the decision was against such claim, a manifest error hath happened, to the great damage of the said John W. Cannon, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 18th day of March, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the district of Louisiana.

(Indorsed:) Supreme Court. 4777. United States circuit court. No. . John W. Cannon, plaintiff in error, versus The City of New Orleans, defendant in error. Writ of error. Filed March 19th, 1874. M. P. Julian, d'y cl'k.

285 UNITED STATES OF AMERICA,
State of Louisiana:

The President of the United States of America to the city of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at the city of Washington, in the District of Columbia, on the 2d Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, holding sessions at New Orleans, wherein John W. Cannon is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal, at the city of New Orleans, this 18th day of March, A. D. 1874.

JNO. T. LUDELING,
Chief-Justice Supreme Court of Louisiana.

286 (Indorsed:) For return.

Received May 2nd, 1874, and on the fourth day of the same month and year, served copy of the within rule on the city of New Orleans, defendant in error, by leaving the same at the office of the honorable Louis A. Wiltz, mayor of said city, in the City Hall, corner of St. Charles and Lafayette streets, in said city of New Orleans, in the hands of E. W. Halsey, his secretary, who informed me that the said mayor was absent from his office at the time of said service.

Ret. same day. Sh'ff's fees 50 c'ts.

PH. LACOSTE,
D'y S'hff.

Ph. Lacoste, deputy sh'ff, duly sworn, deposes that all the facts and allegations of his return are true and correct.

PH. LACOSTE,
D'y Sh'ff.

Sworn to and subscribed before me this 7th day of May, A. D. 1874.

M. P. JULIAN,
D'y Cl'k Sup. Court.

(Indorsement on cover:) No. 450. John W. Cannon, plaintiff in error, vs. The City of New Orleans. Louisiana Sup. Court. Filed 11th July, 1874.

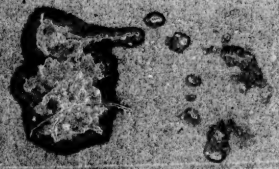
U. S. Supreme Court.

JOHN W. CANNON, PLAINTIFF IN ERROR,

versus

CITY OF NEW ORLEANS.

WM. W. KING,
Of Counsel for Plaintiff.



U. S. Supreme Court.

JOHN W. CANNON, PLAINTIFF IN ERROR,

versus

CITY OF NEW ORLEANS.

This case comes up on a writ of error, taken by the plaintiff from a judgment against him as owner and master of the steamer Robert E. Lee, in a suit against the City of New Orleans, to enjoin the city from levying on the said vessel certain charges or taxes called levee dues, and to recover the amount paid by the said vessel within the twelve months preceding the institution of the suit. Also for the amount of a certain bill of damages alleged to be due by the city.

The claim of the city for the charges against the vessel, is based upon the 2d section of the City Ordinance approved February 11th, 1853.

The first section of the ordinance relates solely to ships and steamships arriving from sea.

The second section reads as follows:

"ART. 2d. Be it further ordained, That, from and after the 1st January, 1853, the levee dues on all steamboats which shall moor or land in any part of the port of New Orleans, shall be fixed as follows:

"Ten cents per ton if in port not over five days, and five dollars per day after said five days shall have expired; provided, that

boats arriving and departing more than once in each week shall pay only seven cents per ton each trip; and boats arriving and departing more than twice each week shall pay only five cents per ton."

The plaintiff contends that said ordinance is contrary to the Constitution and laws of the United States.

The Robert E. Lee is a weekly packet running between New Orleans and Vicksburg. She averages about forty trips per season, and pays eighty-four dollars levee dues on each trip.

The collection of these dues is alleged by the plaintiff to be in violation of the Constitution of the United States, because the ordinance in question imposes a duty on tonnage.

TONNAGE DUTY.

Art. 1st, clause 2d, section 10 of the Constitution of the United States, declares: "No State shall, without the consent of Congress, lay any duty of tonnage."

It is not pretended that Congress has, in any manner, ever consented to or sanctioned the charge imposed by the ordinance of the city. The only question, then, is, whether the charge imposed by the ordinance amounts to a duty on tonnage within the above cited prohibition of the Constitution?

The language of the ordinance is: "The levee dues on all steamboats which shall moor or land in any part of the port of New Orleans shall be fixed as follows," etc., etc.

It is difficult to conceive a more direct violation of the constitutional prohibition than is embraced in the ordinance. The language is too clear and precise to admit of evasion, equivocation or misconstruction.

What is a tonnage duty? It evidently is a charge or tax upon vessels for exercising the rights of commerce, *imposed according to their tonnage.* This is precisely what the ordinance does.

If we are guided by the numerous acts of Congress imposing tonnage duties, or by the decisions of the courts upon the subject, the language of the ordinance clearly creates a "*duty of tonnage.*"

It is almost needless to add, that the right to land or moor is essential to the successful prosecution of commerce by vessels engaged in the carrying trade.

The validity of the ordinance is attempted to be sustained upon the ground that the State had the power to authorize the assessment of reasonable charges for wharfage, and that the ordinance may be justified as a charge for wharfage.

The answer to this is, the ordinance does not, on its face, purport to be an assessment for wharfage, or for the use of a wharf, and, in fact, it is neither in effect or practice a wharfage assessment. Vessels are liable under it whether they land or moor at a wharf or not. As not one-tenth of the port is supplied with wharves, it is manifest, under the language of the ordinance, that a vessel is liable to the charge if she lands or moors in any part of the other nine-tenths of the port. It is a notorious fact, and proved by the evidence in the Record, that vessels can and do land in places in the port where there are no wharves. They are just as much liable to the charge, under the ordinance, as if they had used a wharf. How, then, can it be pretended that the ordinance is a mere assessment for wharfage?

If it be contended that the State had the power to authorize the imposition of a wharfage tax, still the ordinance in question cannot be sustained under the concession, because it is not a wharfage tax.

The Supreme Court of the United States have effectually put a stop to that mode of reasoning.

In the State Tonnage Tax Cases, 12 Wall. 204, there was no doubt as to the power of the State of Alabama, to tax as property, steamboats owned and running altogether within the limits

of the State, but that a tax imposed upon such vessels at so much per ton, was a duty on tonnage, prohibited by the Constitution of the United States.

So, in the case of Charles Morgan, recently decided by this Court, in relation to the charges for quarantine at Galveston. The right to impose quarantine restrictions and reasonable charges was conceded; but when imposed at so much per ton upon all vessels, it was declared to be a duty of tonnage, prohibited by the Constitution.

Because a State has the power to impose a legal tax or charge, it does not follow that an illegal one is thereby justified.

By such reasoning the prohibitions of the Constitution would be easily evaded, and be rendered nugatory.

REGULATING COMMERCE.

The ordinance in question is void, because it is in violation of the laws of the United States regulating commerce.

The following constitutional provisions have been violated:

Art. I, clause 2d of section 10: "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws."

Clause 5th, section 9: "Nor shall vessels bound to or from one State, be obliged to enter, clear, or pay duties in another."

Clause 3d, section 8: "Congress shall have power to regulate commerce with foreign nations, among the several States, and with the Indian tribes."

LAWS OF CONGRESS.

The act of Congress of February 20th, 1811, authorizing Louisiana to make a Constitution, etc., preparatory to admission into the Union, declares:

"The Mississippi river, and the navigable rivers and waters leading into the same, or into the Gulf of Mexico, shall be common

highways and forever free, as well to the inhabitants of the said State, as to the other citizens of the United States, without any tax, duty, impost or toll therefor, imposed by said State."

The act of Congress of April 14, 1812, admitting Louisiana into the Union, re-enacts the above clause in the identical words.

The act of 18th February, 1793, granting licenses to vessels engaged in the coasting trade, is also violated by the ordinance.

In reference to the privileges conferred by a license from the United States, the U. S. Supreme Court, in the case of Gibbons vs. Ogden, say:

"These privileges cannot be separated from the trade, and cannot be enjoyed unless the trade may be prosecuted. The grant of the privilege is an idle and empty form, conveying nothing, unless it convey the right to which the privilege is attached, and in the exercise of which its whole value consists."

thers, c. p.

The evidence shows there should be a space on the levee of three hundred feet for the convenience of vessels discharging their cargoes of cotton. Further, that there is no portion of the port where there is that space. That there are portions so narrow as sixty-four feet. If from this there be deducted sixty feet necessary for a street or road along the levee, only four remains for receiving the cargoes of vessels.

hon, Rec. p.

. Rec. p.

Further, great inconvenience and loss to steamboats have been caused by the want of sufficient space.

That the levee has not been kept in order even on the narrow limits left.

That steamboats do not receive the accommodation they have the right to expect, from the amount of charges imposed on them.

The wharves are wooden projections from the levee over the water of the river, and are not a part of the levee.

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Bell. It further appears, that the length of both shores of the river, embraced in the port of New Orleans, is about twenty-four miles. That the entire portion of these shores on which wharves have been built, is about one and three-fourths miles, less than one-twelfth of the space.

Leathers. That vessels do often land and moor to portions of that shore where there are no wharves.

Now, by the city ordinance in question, all vessels that land or moor on any portion of that twenty-four miles of shore, are subjected to the charge stated in the ordinance.

The question is, in view of the provisions of constitutional and statute laws cited, can the payment of the charge be legally enforced?

It is apparent that if the State of Louisiana has the power to impose the assessment in the arbitrary manner assumed by the city ordinance, of eighty-four dollars per trip of the vessel, she has equally the power of assessing double that sum, and may continue so to increase the assessment until it would amount to an absolute prohibition of the navigation of the river.

Further, that if the State can seal up twenty-four miles of the shores of the river against the landing of vessels, except under extremely onerous conditions, she could, with equal legal propriety, do the same for one hundred miles, and, in fact, for all of both shores of the river within her territorial boundaries. To prevent the possibility of her doing so, was the very object of the constitutional provisions and laws we have cited; and, if allowed, would virtually annul them.

It has been often decided by the U. S. Supreme Court, that the power to regulate commerce is vested exclusively in Congress. That the power extends to the regulation of intercourse and navigation, and to the determination of what shall be considered, in judgment of law, an obstruction of navigation.

The case does not involve the consideration of what has often proved a very embarrassing question to the courts, to-wit: how far, in the absence of any regulation by Congress, a State might regulate commerce. The acts of Congress of 1811 and 1812, admitting Louisiana into the Union, do, in the most positive manner, regulate the commerce and navigation of the river Mississippi. In palpable violation of those laws, the city ordinance in controversy does impose a tax, duty, impost and toll upon persons and vessels exercising, on that river, the rights of commerce and navigation.

Without specifying the numerous respects in which the ordinance violates the law, we shall refer to a few important principles which are well settled.

In the case of Brown vs. The State of Maryland, the U. S. Supreme Court held that a law imposing a license tax upon the importer of goods for sale, was a tax upon the goods, and, therefore, prohibited by the Constitution and laws of the United States. Chief Justice Marshall, the organ of the court, said: "It is argued this is not a tax upon the article, but on the person. The State, it is said, may tax occupations, and this is nothing more. It is impossible to conceal from ourselves that this is varying the form, without varying the substance. It is treating a prohibition which is general, as if it were confined to a particular mode of doing the forbidden thing. All must perceive that a tax upon the sale of an article, imported only for sale, is a tax on the article itself."

"The distinction between a tax on the thing imported, and on the person of the importer, can have no influence on this part of the subject. It is too obvious for controversy, that they interfere, equally with the power to regulate commerce."

"A tonnage duty is as much a tax as a duty on imports or exports."

If a tax on the importer be a tax on the goods imported, certainly a tax on the vessel that brings the goods is equally a tax

upon the goods brought. In fact, that is the very case anticipated by the Constitution; such a tax is a tonnage duty, and this is expressly prohibited.

The charge imposed by the city ordinance, then, is not only a tonnage duty, but, in the language of Chief Justice Marshall, is also a tax on the goods transported by the vessel, and expressly prohibited by the before recited act of Congress of 1811.

If we look to the acts and charges, under State authority, which have heretofore been held by the courts to amount to an illegal interference with commerce and navigation, we find the impositions affixed by the city ordinance, present a far more serious interference than those complained of in the cases decided.

12 How., 227. In the case of Sinnott vs. Davenport, the U. S. Supreme Court declared: A State has no power to impose restrictions on vessels carrying on the coasting trade, in addition to those imposed by the act of Congress.

The State law, in this instance, imposed no pecuniary burden further than giving a bond, and registering the title of the vessel in the records of the State.

7 How., 283. In Smith vs. Turner, that a State law requiring the masters of vessels engaged in foreign commerce to pay a certain sum to a State officer, on account of every passenger brought from a foreign country, was held to be unconstitutional.

24 How, 169. In Almy vs. California, it was declared that a State had no power to impose a stamp duty on bills of lading for goods exported therefrom.

6 Wall., 31. In Steamship Company vs. Portwarden's, the court decided that the law of Louisiana, requiring the payment of five dollars to the Portwardens, whether they performed services or not, to be unconstitutional, because it was a regulation of commerce, and a tonnage duty.

The same principle was re-affirmed in the subsequent case of Master and Wardens vs. Foster. In this case it was decided that

the State could not give the exclusive right to the Master an Wardens, to make survey of goods and vessels damaged at se

We refer, also, to the case of Gibbons vs. Ogden, and Brown v State of Maryland.

The list of cases might be greatly extended, but the above we think sufficient to establish, from auhority, that the city ordinance imposes burdens upon commerce of a character which renders it null.

CONSTRUCTION OF THE CITY ORDINANCE.

To properly understand the true meaning of the city ordinance, some reference to the legislation of the State becomes necessary.

The act of the Louisiana Legislature of February 15th, 1808, declares: "That any person who shall be convicted of having received any compensation for the landing of any embarkation before his land, or for other use permitted by the laws of this Territory, which provides that the shores of navigable rivers shall remain free for the common use of all men, shall for each contravention of that kind, be find in a sum not less than five hundred dollars, Provided, That the present provision shall not be applicable to the duties which corporations of cities or towns have a right to establish in their ports."

In the year 1843 the Legislature passed the following act:

"That from and after the passage of the present act, it shall be incompetent for the Mayor and City Council of New Orleans, or to either of the Municipalities of said city, to enact, or enforce, or execute any law, ordinance or regulation now enacted, whereby any tax, duty, impost, or charge of any nature whatsoever, shall be or is imposed upon goods, produce, wares and merchandise of whatsoever kind or nature, landed in or shipped from the corporate limits of the said city."

9 R. R. 326, and note.

This law was passed in consequence of a very onerous wharfage tax imposed by the city the 21st of June, 1842.

Ib.

The Supreme Court of the State decided this wharfage tax to be illegal.

Such was the condition of the legislation of the State at the date of the enactment of the city ordinance involved in this case, to-wit, 1853.

The mere dates of these different laws and city ordinances, explain the reason for the city changing the "*wharfage tax*" to one for "*levee dues.*" It was done manifestly to evade the prohibition in the act of 1843 against a wharfage tax, and by this evasion to enjoy the forbidden fruit under the "*nom de guerre*" of "*levee dues.*"

In addition to the foregoing laws of the State, we refer to the following articles of the Civil Code of Louisiana:

Art. 444: "Navigable rivers, seaports, harbors," etc., "are public things," "the property of which is vested in the whole nation, and the use of which is allowed to all the members of the nation."

Art. 466: "The use of the banks of navigable rivers or streams is public; accordingly every one has the right freely to bring his vessel to land there, and make fast the same to the trees which are there planted, to unload his vessels, to deposit his goods, to dry his nets, and the like."

C. C. 448: "The banks of the river or stream are understood to be that which contains it, in its ordinary state of high water. Nevertheless, on the borders of the Mississippi where there are levees, the levees shall form the banks."

DEFENDANT'S POSITIONS.

In her answer, the city alleges: "That she was, by law, authorized to impose a *wharfage charge* for keeping the wharves in a proper condition for the safe and expeditious shipping and loading

of merchandise, and that she did, in accordance with her legal right and authority, impose a certain amount upon all vessels loading and unloading at the *wharves* aforesaid.

We deny, emphatically, that the city ordinance in question is any such ordinance as that set up in the answer.

The wharves and the levee are distinct and different places. The levees are embankments of earth to protect the city from inundation. The wharves are wooden constructions extending from the levee out into the river.

The city ordinance in question says not one word about the wharves. The very word was studiously and intentionally avoided. It will be recollected that this ordinance was passed by the city in the year 1853, some ten years after the State had, by the act of 1843, positively prohibited a tax or charge upon goods landed on the wharves. If the city had attempted to evade this law, by changing the wharfarge tax to steamboats landing at the wharves, under the authority of the case of Brown vs. The State of Maryland, the courts would have been compelled to have decided this was in reality a tax upon the goods, and equally repugnant to the prohibition contained in the act of 1843. The city was well aware of these facts, and knew that no wharfage tax "*eo nomine*," could be imposed on vessels. The act of 1843, however, did not prohibit the imposing of levee dues, and the city, in her greed to levy contributions upon the commerce of the country, seized upon this new device.

There had been, long before, some inconsiderable charges imposed by an ordinance of O'Reilly, on vessels landing at the levee. These were called "*levee dues.*" As these charges were very light, they have never, to our knowledge, been the subject of judicial controversy or determination. What effect the admission of Louisiana into the Union, and the acts of Congress of 1811 and 1812, had upon this ordinance of O'Reilly, has never been the subject of adjudication. It is probable the ordinance ceased to

have effect after that event. It was inconsistent with the previously cited articles of the Civil Code, adopted in 1824, and revised and re-enacted in 1870.

9 R. R. 326. In speaking of the ordinance of O'Reilly, the Supreme Court of the State, in Worsley vs. New Orleans, say the charge "was paid by the vessel in proportion to her tonnage, for the privilege of anchoring alongside the levee, and without reference to any other artificial works or facilities than the embankment itself, commonly called the levee, and does not contemplate any charge for the landing of cargoes." If such was the meaning of the phrase "*levee dues,*" in the ordinance of O'Reilly, how can the very same words be construed differently in the present city ordinance? The city could not impose a wharfage tax; it was forbidden by the law of the State. We have shown the history and the meaning of the term "*levee dues,*" and the motive for employing that term in the ordinance. The city cannot now defend these dues upon the ground that they are merely assessments for wharfage dues. They are not wharfage dues, and this part of the defence is unsupported by the facts essential to maintain it. As the charge cannot be defended upon the ground that it is a wharfage tax, the question then recurs, can the State authorize the city to levy the amount claimed under the ordinance, for the mere privilege of landing or mooring anywhere within the port, embracing on both shores a space of twenty-four miles?

The ordinance, on its face, does not purport to base the charge upon the use of the levee. It is for landing or mooring in the port. At low stages of water, in many places, a vessel could not approach near the levee, and she might moor without ever touching or using the levee. Why should there be a charge by the levee against vessels? The levee was not built for the use of commerce, but to preserve the city from inundation. If it be said that vessels do use the levee in delivering their cargoes, they equally use the streets and the lights of the city; and charges for paving the streets and lighting the city might be levied upon them with just as much propriety as for using the levee.

If the right be conceded to the city to charge levee dues, to what extent can such dues be carried? Certainly not beyond an amount sufficient to keep the levees in order for the purposes of commerce. This would not reach one-twentieth of the sum realized from these charges, under the pretext of levee dues; and the city cannot, under that pretext, legally levy a revenue upon the commerce of the country, to the enormous extent authorized by the ordinance.

The language of the ordinance shows on its face, as well as the financial reports of the city in the Record show, that the money raised by these charges enter into the fisc of the city, to be used for general purposes.

The charges imposed by the ordinance were essentially, from their nature, burdens upon commerce. If the city undertakes to vindicate her right to impose those burdens, on account of meritorious services to commerce, she must prove what were those services, otherwise the defence fails. The onus is upon her. The Record does not show that she expended one dollar of these charges on those levees, or that the vessels were benefited by the *levee* in consequence of the expenditure of the fees paid by them. There is nothing either equitable or meritorious under which the city can claim these as *levee dues.* They are sheer impositions on the commerce of the country for the benefit of the coffers of the city.

WHARFAGE.

Our adversaries have not defended these charges as levee dues. They base their defence solely upon the ground that they are wharfage dues. We again protest against their being called wharfage, and against that line of argument which seeks to justify illegal levee dues, by merely styling them wharfage dues.

If, for the sake of argument, we will concede that they are wharfage dues, does it follow that the city can levy, illegally,

revenue out of commerce under the name of wharfage dues, any more than she can do so under the name of levee dues?

We apprehend the Constitution and the laws of the United States prohibit the one as well as the other. Even if the State had authorized the imposition of wharfage dues, there must be some limit or bound under which those charges are to be imposed, otherwise they might be carried to the extent of destroying commerce. In the first place, the exactions of such charges must be limited to the exact locality where the wharves are situated, and must be assessed for the use of the wharves. The ordinance in question complies with neither of these requisites. It imposes the charges for landing or mooring in the port, whether or not there be wharves at the place of landing. It imposes the charge whether or not the vessel receives or discharges a cargo; whether she lands from necessity or in the pursuit of her business. Such a charge must be regarded as tonnage duty, or a tax upon commerce.

Again, the charge imposed for wharfage must be so limited in amount as not to present a serious obstacle to commerce. It must be imposed as a reasonable remuneration for the services rendered, and not as a means of levying an independent revenue upon the commerce of the other States. Both these principles have been violated by the city ordinance. It is excessive in the amount, and so imposed as to raise a large revenue for the city. It is, consequently, null. It is not for the Court to apply the pruning knife to those charges, and trim them down to what would be a proper allowance for wharfage. This would be legislation, and not judicial action. The ordinance must be taken as it stands as a whole. If any portion of the charges be imposed for the purpose of raising a revenue out of commerce, the whole ordinance is vitiated and must fall. It is not for the Court to enact a different ordinance which might be legal.

If the right of the city to lay a wharfage tax be taken for granted, can she collect such a tax under an ordinance imposing

solely levee dues? We think this could not be done, and that an ordinance must be passed for the purpose before she could demand wharfage. To make this clear, suppose the State had forbidden the city to charge levee dues, could she, notwithstanding, proceed to collect such dues, by simply changing the name and calling them taxes for street dues? We imagine no one would support such pretensions. Why, then, should she be allowed to collect wharfage, which was forbidden by the State, under the garb of levee dues?

If it be conceded that the city has now the right, from the State, to lay a wharfage tax, does this authorize the collection of levee dues, or wharfage, under an ordinance passed twenty years before, at a time when a wharfage tax was forbidden? We consider it would not, any more than if such void ordinance had never existed. An ordinance imposing a whafage tax must be passed, before the tax could be legally collected. No such ordinance has been passed up to this day. The charges claimed by the city cannot be collected as levee dues, because they are in no sense due on account of the levee, nor can they be enforced as wharfage dues because there is no ordinance laying a wharfage tax.

The decision of the Supreme Court of Louisiana was based on the authority of

The Case of Municipality No. 2 vs. Pease.—Our adversaries rely mainly upon the authority of this case. As we were of counsel in the case we are familiar with its history. We propose to show, from a review of it, that it can have very little influence in the disposition of the present suit.

The decision of the Supreme Court of Louisiana was taken by a writ of error to the U, S. Supreme Court, and was only confirmed in consequence of an equal division of the judges. This, in a great measure, destroys the weight of the case as an authority. It was tried at a time when the fervor for State rights was extreme, and when the slightest encroachment upon what were supposed to be

the rights of local self-government, were viewed with alarm. It was, perhaps, to avoid the discussion of a question which naturally ran into the exciting political topics of the day, that the judges never wrote out their opinions, and the case has never been reported. We imagine very different doctrines prevail now, both in the forum and on the bench, from those maintained at that day with inflammatory zeal, by many of the most eminent politicians of the country.

As we have already stated, any charges upon vessels for the privilege of landing and mooring in a port, are *prima facie*, and, necessarily, burdens upon commerce, and contrary to the Constitution and laws of the United States. This is the general rule, to which there are some exceptions. One of the exceptions is, a charge for a reasonable remuneration for facilities afforded to commerce. The reason for the exception is obvious. The legal prohibitions were intended to prevent impediments to commerce. Such charges are not impediments or burdens on commerce, but are, in fact, a benefit. They are healthful stimulants and not fatal poisons. For this reason they do not fall within the mischief intended to be remedied by those legal prohibitions. It follows, then, that when a party seeks to justify a charge imposed on vessels engaged in commerce, he must show that his case falls within the above exception. The onus is upon him. He must show that the charge is but a reasonable remuneration for the facilities furnished.

The Supreme Court of Louisiana held, the State had the power to authorize the imposition of charges for a reasonable remuneration for facilities afforded, and called upon us to prove the charges were unreasonable and excessive.

Even under this view of the Court, we thought we had established by the evidence that the charges were unreasonable, and pressed the attention of the Court to the facts.

The issue was evaded, and we were answered by the Court, that this was purely an administrative question, into the consideration

of which the Court would not enter. We were referred for redress to more enlarged views of public policy on the part of electors, and to Congress.

To what electors are we referred? Those of the city and State, the very parties who imposed the unreasonable exactions, and who reap the benefit of the spoils thus acquired. It is not probable any relief will come from that quarter, so long as anything can be made out of the commerce of the other States.

We are next referred to Congress. Congress has already passed laws, expressing the most positive prohibitions against the State levying exactions upon commerce, and against any interference with the freedom of the navigation of the river. These laws have been violated. What more can Congress do? That body is not so organized with executive officers as to enforce obedience to its laws. This can only be done through the courts, and we humbly submit, it is their duty to afford the remedy.

If the city has legally the power to impose the exactions, it is very clear Congress has not the right to prevent the city from so doing. How useless, then, the reference to Congress!

The Court further decide, that the question as to the unreasonableness of the amount of the charge. is one left solely to legislative discretion. Here the question presented is as to the right of the City Council to pass a certain ordinance. If it be unreasonable in amount it is conceded to be illegal. We are told, in effect, that if the Council, in their discretion. think it reasonable, it is, therefore, reasonable, however much it may be opposed to all reason. Use your discretion, and, *ipso facto*, the hideous monster, forbidden and condemned by law, by some species of transfiguration is metamorphosed into something altogether lovely! This is to make the extent of the power solely dependent upon the will of the party who exercises it In other words, to make the power arbitrary and absolute.

Any such rule for the ascertainment of the powers of the city, would justify taxation *ad libitum*, and abrogate the provisions of the Constitution and laws of the United States made for the protection of commerce.

The Court further appears to have been perplexed with the idea, that they were called upon to fix the exact amount the city might legally charge for wharfage. This apprehension was grounded upon what we deem another very grave error of the Court, to-wit: The idea that if the city had the right to charge a penny only for wharfage, and, under the pretext of that right charged a pound, the Court was bound to sustain the whole charge. The very reverse of this is true. If the city charges a pound, by an ordinance, when she could only legally charge the penny, the whole ordinance is void, and even the penny could not be collected under it. The Court virtually admit this. They say: "If this wharfage is a tax on commerce, or on imports or exports, it is unconstitutional, however small the amount."

When the City Council shall confine itself to its legitimate powers, and pass an ordinance which they can prove, by evidence imposes only a reasonable wharfage, then, and not before; the Courts may, with propriety, decide the ordinance is legal.

OTHER DIFFERENCES BETWEEN THE CASES.

But there are material differences between the evidence and the circumstances under which that case was tried, and the one now before the Court, calculated still farther to weaken its authority.

In the first place, the city ordinance was not identically the same, and did not so clearly lay a tax on tonnage.

A far more material difference is in the evidence introduced.

The evidence in that case was taken long before the decision of the Supreme Court was rendered. It was difficult, at that date, to make it clearly appear that the city was realizing a large net revenue from the wharves. The building of the wharves had been

commenced only a few years before, and had been very actively prosecuted. A wharf when built will last many years, with a slight expense for repairs. The heaviest outlay is for the building of the wharf. At the time the evidence was taken in that case the wharves were all new, and, of course, the heavy expenditure had been incurred. To keep them in repair afterwards would require comparatively a very inconsiderable sum. Owing to these facts, the annual expenditures were much larger than the average of the subsequent expenditures. At the same time the revenue from the wharves was annually increasing. In determining what amount the city might legally charge for wharfage, the average annual expenditure should be considered. It would be very unreasonable to make the first boat that arrived at a new wharf, pay the whole cost of the wharf. It would, likewise, be unjust to compel the boats that arrived the first year to pay for the wharves. These considerations show the difficulty we encountered in taking testimony upon the subject in the earlier stages of wharf building.

In the case now before the Court, we have been enabled to present testimony much more satisfactory as to expenditures and receipts from the wharves.

THE TAX EXCESSIVE.

The leases of the wharves show the tax is greater than is necessary to maintain them. The lessees were bound to repair the wharves and keep them in good order and condition, for the privilege of collecting the charges imposed by the ordinance.

Rec. p. For this privilege, for three years, in the year 1855, the lessees paid a bonus of $538,000.

Rec. p. In 1858 the lessees gave a bonus of $1,052,000, for the same privilege for four and a half years. These bonuses were net revenue of the city from the ordinance, amounting to $1,590,000, thus levied upon the commerce of the country. In addition to this large amount of profit to the city, it is notorious the lessees made fortunes from the collections under the ordinance.

Mr. Rigney made a similar lease from the City of Jefferson, now a part of the City of New Orleans, for which he agreed to pay an annual sum of $2,300 for five years. After the annexation to New Orleans, the city brought suit against him for the annulment of the lease, which is still pending. In that suit the city alleged he had made out of the lease a sum of $25,000 over and above the sum he was bound to pay for the lease.

These leases further show, as well as the statement of the expenses of the wharves, that no part of the money raised under the ordinance was expended on the *levee*. It was given to the lessees in consideration of the bonus, and their undertaking to *repair* and to keep in repair the *wharves*, just as they might have undertaken to pave the streets, or to build municipal halls or prisons.

The amount of net revenue received by the city from these leases, was clearly an illegal tax on commerce.

Before the expiration of the last of the above leases, the city releasing the lessees, undertook the administration of the wharves.

An attempt was made to show, by the evidence of Mr. Devereux, that the city had actually lost money by the wharves.

The fact that the lessees paid over a million and a half for the privilege of collecting the charges, shows they were in excess of what was necessarily required for the wharves. This demonstrates the extravagance of the city in expending the revenues of the wharves. If it be taken for granted, that so long as the city can manage to expend the revenues, the charges are reasonable, what an incentive to favoritism, nepotism, and even corruption! If such doctrines meet with judicial sanction, there is no end to the extent of such charges, short of an absolute interdiction of commerce. So far from the city being entitled to any credit for her lavish expenditures of the revenues of the wharves, it is confirmation strong of the abuse of her powers in levying excessive charges, and shows the impropriety of trusting the entire subject to her discretion, or to the cupidity of her officers and attaches.

The same conclusion will be reached by a careful analysis of the statement of Mr. Devereux, furnished by the city, of the receipts and expenditures from the wharves.

Numerous official published statements had been offered in evidence by the plaintiff. The attorney for the city insisted they were not correct, and was allowed to furnish Mr. Devereux's evidence and statement, as the correct account of receipts and expenditures. Upon this statement the city stakes her case.

Mr. Devereux undertakes to give such a statement, commencing April 12th, 1852, and coming down to December 31, 1871.

He also makes an estimate of the same character for the year ending December 31st, 1872.

The result of his figures makes the city loser upon the whole term of $293,423.

The following are the manifest errors in his statement, which, when corrected, lead to a very different result :

Rec. p.

Mr. Devereux, after correcting by his evidence the balance in the statement F, commences with that balance and continues the account down to December 31st. 1872.

If errors were committed in the items of expenditures, of course they affected the result.

In the statement F it is submitted a very gross error was committed.

The city held the notes of the lessees for the sum of $435,399. These notes were receipts from the wharves in the hands of the city, and were assets.

She voluntarily released the lessees and returned the notes to them.

Extraordinary as this may appear, she was actually guilty of the extravagance of giving the said lessees the sum of $81,944, for the privilege of thus releasing them.

These two items are charged by Mr. Devereux as expenditures. They are in no sense of the word legitimate expenditures for the wharves. They were donations or gratuities from the city to those lessees.

If the City be thus allowed to spend the revenues of the wharves in magnificent gratuities, and charge them to necessary expenses of the wharves, the commerce of other States is at her mercy. However great the revenue may be, it can be easily given away.

His statement should, therefore, be corrected by placing these two items to the other side of the account.

Under various ordinances of the city, at different dates $1,000,000 of bonds were issued to repair and construct wharves. These bonds all had ten years to run, and bore seven $\frac{3}{10}$ per cent. interest. They were to be redeemed from a sinking fund established out of the revenues of the wharves, one-tenth annually.

In making out this statement, Mr. Devereux charged these bonds at par as expenditures from the very day they were issued. It is apparent nothing was due on these bonds, and, therefore, nothing would be paid until the interest matured and the one-tenth was due one year after their date.

Further, the bonds are charged at par, when, by the ordinance, they were to be issued at 90 cents on the dollar. But Mr. Eager, one of the contractors for building and repairing the wharves, states the bonds were seventeen per cent. below par. Of course the city paid a higher price for the work done, in consequence of the depreciated currency in which the payments were made. All these considerations were overlooked in Mr. Devereux's statement.

Omitting the depreciation in the bonds, and making the corrections necessary under the foregoing facts, the following is the true state of receipts and expenditures down to December 31st, 1872:

CITY ACCOUNT WITH WHARVES.	RECEIPTS.	EXPENDITURES
From April 12, 1852, to Dec. 31, 1871...		$293,423 00
Errors in Statement F, Notes of Lessees returned.....	$435,399 00	
Errors in Statement F, Bounty to Lessees	81,944 00	
Bonds charged December 31, 1870, due only in part 1871.....	400,000 00	
Bonds charged June 30, 1871, due in part 1872.....	139,000 00	
Bonds charged December 31, 1871, due in part 1872.....	233,000 00	
Bonds estimated charged 1872, due in part 1873.....	228,000 00	
Interest on $400,000 bonds due December 31, 1871, at 7 3/10.....		29,200 00
Instalment for Sinking Fund, December 31, 1871, at 10.....		40,000 00
Estimates for 1872 receipts.....	300,000 00	
7 3/10 Interest on $400,000 at 7 3/10 due December 31, 1872.....		29,200 000
Instalment on $400,000 at 10, due December 31, 1872.....		40,000 00
7 3/10 Interest on $139,000 at 7 3/10 due June, 1872,		10,147 00
Instalment on $139,000 at 10 per cent.		13,900 00
Interest on $233,000, due December 31, 1872.....		17,009 00
Instalment on $233,000, at 10 per cent., due December 31, 1872.....		23,000 00
Cash estimated for 1871.....		82,650 00
Cash estimated for 1872.....		7,000 00
	$1,817,433 00	$564,969 00
Net receipts.....	$1,352,474 00	

It will be perceived that the foregoing account is made out upon the basis of what the city had actually paid, and not for bonds having ten years to run, which have not been, and may never be paid.

It is thus apparent the city has been realizing a large net revenue from the wharves, at the expense of the commerce of the other States. As the revenue is annually increasing, this profit in future years will be greatly augmented.

These are the results even under the extravagant administration of the wharves by the city.

WHARFAGE IN OTHER STATES.

The Supreme Court of Louisiana in Peas vs. Municipality No 2, refers to the fact that wharfage is exacted in other maritime ports of the United States without objection. Other States are governed by different laws from ours, and very different rights spring from them. The claim of individuals to demand wharfage in the other parts of the Union, arises from the principle of the common law, that the rights of the riparian proprietor on navigable streams, extend to the navigable current, and, consequently, he may construct wharves and charge for the use of them. It is apprehended, under the articles of our Civil Code, and the Criminal Statute of 1808, no such pretentions in behalf of riparian proprietors can be maintained here. In the Common Law States, the right to charge wharfage is a right of property. It is not so here; on the contrary, the attempt to exercise such a right is made a highly penal offence.

CONCLUSION.

The charge imposed by the city ordinance is—

1st—Not a wharfage tax, but in the language of the ordinance was for "*levee dues.*"

2d—That if it be a wharfage tax it is unreasonable in amount, and the excess is, necessarily, a tax upon commerce, for the benefit of the general fisc of the city.

3d—That the ordinance clearly laid a duty of tonnage.

4th—That it interferred with the right of Congress to regulate commerce, by imposing a tax or duty upon vessels engaged in commerce, and by taxing the trade and produce of other States of the Union.

5th—That it interferes with the rights of navigation as secured by the United States license to carry on the coasting trade.

In all these respects, the said ordinance is violative of the Constitution and laws of the United States, and is, consequently, null and void.

REFUNDING MONEY PAID.

The plaintiff claims judgment for the money paid within the twelve months preceding the institution of the suit. This claim is based upon the following articles of our Civil Code:

Art. 2273: "All acts from which there results an obligation without any agreement, * * *form quasi* contracts. But there are two species, principally, which give rise to them, to-wit: the transaction of another's business, *and the payment of a thing not due.*"

Art. 2279: "He who receives what is not due to him, whether he receive it through error or knowingly, obliges himself to restore it to him from whom he unduly received it."

Art. 2280: "He who has paid through mistake, believing himself a debtor, may reclaim what he has paid."

Art. 2281: "A natural obligation to pay will be sufficient to prevent a recovery."

There was no natural obligation to pay a tonnage duty, or an illegal tax on commerce.

The foregoing articles are too explicit to require any comment.

The amount paid by the plaintiff was $84 per trip, and the vessel made forty trips per annum, amounting to the sum of $3 360.

Respectfully submitted,

WM. W. KING,

Of Counsel for Plaintiff.

I file the foregoing argument as my brief in this case.

R. H. MARR,

Of Counsel for Plaintiff.

Supreme Court of United States.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 450.

Brief of P. PHILLIPS,

For Plaintiff in Error.

S. & R. O. Polkinhorn, Printers, Washington, D. C.

Supreme Court of United States.

JOHN W. CANNON
vs.
CITY OF NEW ORLEANS. } No. 450.

Brief of P. PHILLIPS,

For Plaintiff in Error.

The action in this case was by petition to the District Court of New Orleans in the name of Cannon, as owner of the steamboat, Robert E. Lee, to enjoin the city from the collection of a tax againt the steamboat under an ordinance of the city, set forth at p. 21 of the Record.

By this ordinance it is enacted that, "the levee or wharfage dues" should be "on all vessels and steam-tugs arriving from the sea, as follows: on vessels of 1000 tons or under, 15 cts. per ton;" "on steamships navigating the Gulf of Mexico or the Ocean, 15 cts. per ton."

"The levee dues on all steamboats which *shall moor or land in any part of the port of New Orleans, ten cents per ton* if in port not over five days, and $5 per day after the said five days shall have expired."

The petition shows that the "Robert E. Lee" was duly enrolled and licensed under the acts of Congress to carry on the coasting trade.

That for many years she had been engaged in commerce between the cities of New Orleans and St. Louis.

That the petitioner had been compelled to pay under this ordinance within 12 months past $3,360. The boat being 840 tons, and making about 40 trips per year.

The petitioner avers that the ordinance is not founded on any supposed advantages or benefits conferred, but is made for raising revenue, and the taxes thus levied are used for the general purposes of city administration; that it is in conflict with the acts for the admission of the State into the Union; and with those provisions of the Constitution of the United States prohibiting the levying of any duty of tonnage; exempting vessels bound to or from any State from paying duties in another; and with the power conferred on Congress to regulate commerce among the several States.

On the hearing, the District judge was of opinion that the ordinance was unconstitutional, but considering himself bound by the decree of the Supreme Court of the State, in the case of Municipality v. Pease, 2 An., 538, judgment was rendered for defendant. p. 94.

On appeal to the Supreme Court of the State this judgment was affirmed—the court holding that the ordinance was not in conflict with the acts of Congress or the Constitution of the United States. p. 137.

From this judgment the writ of error is prosecuted.

ASSIGNMENT OF ERROR.

The judgment is erroneous in holding the ordinance, herein described, as constitutional, while it should have held that it was in conflict—

1. With the act of Congress admitting Louisiana into the Union.

2. With the provision which prohibits the States from levying any duty of tonnage.

3. With the provision exempting vessels bound to or from any State paying duties in another.

4. With the provision conferring on Congress the power to regulate commerce among the several States.

The question then is as to the constitutionality of the ordinance which provides "that the *levee* dues, on all steamboats which shall *moor* or *land, in any part of the port of New Orleans* shall be *ten cents per ton, &c.*"

It appears from the evidence that the shores of the port measure twenty-four miles, and the portion improved by wharves is less than a twelfth of that measurement.

If it were admitted that a charge for the use of a wharf could be sustained, still, it is submitted that, the ordinance as it now stands, must be condemned.

It is true that a statute may be held valid in part though in an other part it contains an illegal clause. But this only obtains where there are distinct provisions, and where the objectionable feature can be exscinded, and still leave a complete enactment.

Here this cannot be done; the body of the ordinance levies the tax for mooring or landing anywhere in the port, and this tax is designated as *levee dues.*

Whatever may be the right of control over navigable rivers in other States, we are not left in doubt as to the relation of Louisiana, to the Mississippi. She was admitted into the Union on the solemn pledge and condition—"that the River Mississippi, and the navigable rivers and waters leading into the same, or into the Gulf of Mexico, shall be common highways and forever free,

to the inhabitants of said State as to other citizens of the United States, *without any tax, duty, impost, or toll therefor* imposed by said State." 2 Stat., 642

This free use of the river thus stipulated for, certainly includes the right to "moor or land."

The Constitution of the United States to which the State became a party, had already provided that vessels bound to or from one State should not be obliged to pay duties in another. It had also prohibited the States from taxing imports or exports or from laying a duty of tonnage.

It would therefore seem to be very evident that this stipulation imposed upon the State is other and further restriction than the Constitution, by general provision had already declared to be obligatory on all the States of the Union.

It is no answer to say that when the State was admitted, it was on a footing of equality with other States. This argument was made and fully refuted in a case which arose under a similar provision in the ordinance of 1787. (Lysander Spooner v. McConnell, 1 McL.)

In reference to the ordinance of 1787, which contains the same stipulation, it has been judicially determined that, while some of its articles have been superseded by the admission of the States within the northwest territory into the federal Union, it has, nevertheless, been repeatedly decided, that the solemn guaranty referred to is still in force, and is a perpetual prohibition to such States from authorizing any impediments or obstructions to the free navigation of the water courses within its scope.

The jurisdiction of the States over their rivers is not denied, but this jurisdiction cannot be exercised so as to interfere with this free navigation.

William Jolly v. Terre Haute Bridge Co., 6 McL., 237.

If the city under the authority of the legislature could levy a tax for the right "to moor or land within the *port of New Orleans*, then "the legislature could tax the right to "moor or land" *anywhere in the State.*" We submit that this would be a palpable violation of the Constitution, as well as the acts of Congress regulating *the coasting trade.* The object of the one as well as the other is to secure a *free commerce*, which consists not only in an exchange of commodities, but extends to, and includes *navigation* and *intercourse.*

The power thus to tax domestic vessels would be equally potent for the taxation of foreign vessels; its exercise would directly conflict with our commercial treaties with foreign nations.

The argument which rests the power of taxation on the ground of improvements in the erection of the levees, leads to this, that however slight or unimportant the improvement may be, it calls into exercise the unlimited power of taxation.

Under such a power the State might raise its whole revenue by taxes on commerce.

We say unlimited, in the sense that it would rest solely in the discretion of the legislative power, uncontrolled by the judiciary.

In the case of Weston v. city of Charleston, the chief justice says, "if the right to impose the tax exist, it is a right, which in its nature acknowledges no limit and may be carried to any extent within the jurisdiction of the State or corporation which imposes it, as the will of each State or corporation may prescribe." (2 Pet., 449.)

In the case of the First Municipality v. Pease, heretofore referred to, where the question of wharf dues was before the Supreme Court of Louisiana, the court, bor-

rowing the language of the chief justice in M'Cullough v. Maryland, said, " we are not driven to the perplexing inquiry so unfit for the judicial department, as to what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power."

The levees in the port of New Orleans were erected as a protection from overflow. The cost of their construction is a proper charge on the general treasury of the city or State. They were interposed between vessels arriving in port and the inhabitants with whom commerce was carried on. To moor or land there, was, therefore, compulsory. Under such circumstances the State cannot claim the power to tax *ad libitum* the commerce which seeks her port. This would be to claim that a wall might be built around the city, and no one be permitted to enter therein for trade, but on payment of such tax as the State might prescribe.

But independent of these consideration, the ordinance is invalid as being a tax of tonnage.

Conceding the right of the State to levy a tax for mooring or landing within the port, it cannot, by the repeated decisions of this court, exercise the right by a tonnage tax.

In the State tonnage tax cases, a tax of so much a ton was levied on steamboats which were owned by citizens of Alabama, and engaged exclusively in the internal commerce of the State of Alabama. While admitting the full exercise of the State power over the subject as to amount of the tax to be levied, this court declared the the act to be void, on the ground that the Constitution prohibited the exercise of this power in the form of a tax on tonnage. 12 W[illegible] 212.

This decision was repeated at the last term in the case of Peete v. Morgan, in which a tonnage duty had been levied by the State of Texas, in the execution of the power of establishing quarantine laws.

The case of the First Municipality decided that a tax for *wharfage* might be maintained as constitutional, and not in contravention of the act for the admission of the State.

This case was brought here on writ of error, and the judgment was affirmed on a divided court.

Here it will be perceived that the ordinance complained of is one that exacts a "levee due" on any vessel that may "moor or land in any part of the port of New Orleans."

This is a much broader question than is covered by the decision.

Whatever may be the true view of the power of the State over this subject, it would seem to be very clear on the adjudications of this court that the power cannot be exercised in the form of a *tonnage tax*. This question did not arise in the case of the First Municipality.

Refering to the fuller brief filed in this case by my colleague, Mr. King, it is submitted that the ordinance in question must be declared void, and the decree be reversed.

P. PHILLIPS,
Of Counsel for Plaintiff in Error.

Supreme Court of the U. S.

JOHN W. CANNON, *Plff in Error,* *agst.* THE CITY OF NEW ORLEANS, *Def't in Error.*	*Writ of Error to the Supreme Court of the State of Louisiana.*

BRIEF FOR DEFENDANT IN ERROR.

Statement of Case.

The plaintiff in error, on the 9th May, 1871, filed his petition against the defendant in the Eighth District Court of the Parish of Orleans.

It stated in substance that he was the master and owner of the Mississippi steamboat "Robert E. Lee," plying between New Orleans and Vicksburg.

That at divers times, within the last year, he had paid divers sums, amounting in the aggregate to $3,360, to defendant for the privilege of landing and mooring his vessel at the Port of New Orleans.

The petition then sets out in *hæc verba*, the ordinances of the City Council under which he alleges the city compelled him to make these payments.

That he paid the several sums because if he had not his boat would have been seized and himself subject to many small suits in Courts of inferior jurisdiction.

It alleged that the ordinances referred to were in violation of both State and United States Constitutions, and

of Acts of Congress of 1811 and 1812 providing for the admission of Louisiana into the Union.

It alleged that notwithstanding the illegality of the ordinances the defendant still claimed the right to enforce them in the future. That for that purpose they have instituted a suit against him in a Justices' Court, for the charges on a single trip of his vessel, and threaten to annoy him by a multiplicity of suits, &c.

Prayer for an injunction against the city, enjoining it from enforcing the said ordinances, and that the ordinances be adjudged void, and that defendant be condemned to pay plaintiff $4,210, and for other relief.

A temporary injunction was issued. It was afterwards vacated as though bond and security had been given by defendant. (Record, pp. 1 to 4 to 7.)

The defendant answered, denying that plaintiff had paid any sums except such as were properly due for wharfage dues—denied all coercion.

Alleged that the money paid was for the use of the wharves, &c.—that the wharves were in good condition, &c.—though defendant denied that the question of their condition was a judicial one (pp. 7, 8).

Upon the pleadings and evidence three questions are presented:

1. Whether the exaction of these sums as compensation for the wharfage facilities afforded by the city was prohibited by the Constitution of the United States.

2. Whether evidence that the sums exacted were far greater than the amount disbursed for the purpose of building wharves, and keeping the same in repair, is admissible on the question of constitutionality.

3. Whether, in fact, the exaction was greater than fairly proper for the purpose of building and repairing the wharves.

Abstract of Proofs.

The plaintiff, after giving formal evidence of his ownership of the boat, offered a certain agreement be-

tween certain parties by which certain portions of the batture were donated to the defendant (Record, p. 12).

He also proved the City Ordinance of May 26th, 1843, marked A. B., p. 20, and the City Ordinance of Feb. 11th, 1853, marked A. C., p. 20, and a receipt for payment of levee dues by plaintiff's steamboat on one trip, marked A. D., p. 21.

The plaintiff also proved an extract from defendant's annual budget for 1871 (Table F, p. 22). It purports to be a balance sheet of receipts and expenditures on the wharves of four districts from April 12th, 1852, to April 4th, 1870, showing that during that time the total revenues were $3,774,082.53, and expenditures $3,576,074.66, showing a balance to the credit of the account of $198,007.87 for a period of eighteen years.

The plaintiff, however, objected to two items on the expenditure side of that account, and stated that he reserved the right to disprove them (p. 10), to wit: *a.* Item, $100,000, stated as amount of certificates issued and entered on floating debt, and seven-thirty certificates, repairs for 1869 estimated; *b.* Item, $435,390.94, stated as notes returned to the lessees of wharves by compromise with the Finance Committee, in 1862 (p. 22).

As to these items, the plaintiff's counsel testifies by an argument under oath (p. 11).

The plaintiff also put in evidence several extracts from the reports of the city as to collections and expenditures of levee dues (p. 11).

Plaintiff then introduced certain leases of the revenues of the wharves and landings by the city to divers persons. They fill the record from p. 22 to p. 81.

The plaintiff then read the depositions—1. Of himself, p. 82 to 85; 2. T. P. Leathers, p. 87 to 89.

These depositions showed that the plaintiff had landed his steamboat at the wharf at Canal street (p. 84); that the plank wharves han been kept in good order. The depositions tended to show that the levees back of the wharves were not kept in good order (p. 84).

After the case was closed, it was, on plaintiff's application, opened so far as to allow him to put in evidence the

record of the case of City of New Orleans *vs.* Edward J. Rigney (p. 93).

The record of that case will be found at p. 104 to p. 135.

The only object of introducing this record appears to have been to claim, as an admission, a certain allegation in the petition that the amount of certain wharf and levee dues of the City of Jefferson, now a part of the City of New Orleans, for two years, from 1869 to 1871, was not less than $25,000 (p. 105).

The action was one by the city against its lessee, to cancel the lease by reason of the lessee having failed to pay one of his notes at maturity. He tendered payment the next day, and before suit brought, and the Court held such tender a good defense.

The foregoing constitutes the plaintiff's proofs.

The defendant proved:

1st. The statement of the City Surveyor as to the wharves and levees, marked Document S., p. 89; also Document marked S. S. (p. 90), and read the deposition of W. H. Bell, City Surveyor (p. 90).

Document S. shows the length of shore line within the city limits, and the condition of the levee and wharves in the different sections thereof, and the space between the river line and the first parallel river street in the different sections.

Document S. S. shows the amount of certificates issued to contractors for repairing and reconstructing the wharves, from November 1st, 1870, to April 1st, 1871, and the deposition of Mr. Bell shows, that whatever may be the fact elsewhere, vessels landing at the wharves where the plaintiff's vessels landed, received in accomodation a full equivalent for the money they paid.

The defendant further read in evidence the deposition of Mr. Lacey, City Attorney, explaning the allegation in the petition in City of New Orleans *vs.* Rigney (p. 99).

The depositions of Jno. G. Devereux, and of John Cockrem, show that the figures of Table F., p. 22, are correct, and that in a period of time from 1852 to 1872, the expenditures for the wharves have been far greater than the receipts from the tax (99, 100, 101, and to 104).

The Eighth District Court gave judgment for the defendant, and assigned certain reasons therefor, (94–95). Judgment not having been signed, the case seems to have been transferred to the Superior District Court, and a new trial had therein, and judgment by that Court rendered for the defendant and signed (p. 96). The Supreme Court of the State, on appeal, affirmed the judgment (138). Their opinion is on pages 137, 138.

POINTS.

First.—This case cannot be reviewed on writ of error.

The case of New York Mail Steamship Company against the City of New Orleans, argued the second day of the present term on appeal, is exactly analogous.

That case had before been brought before this Court on a writ of error, and after argument on the merits was commenced, this Court, of its own motion, and without any suggestion from the counsel for the Steamship Company, dismissed the writ on the ground that the remedy was by appeal.

The city then took an appeal, and on that appeal the case was heard and decided at the present term.

In that case, as in this, the bill or petition was filed for an injunction and for damages.

In that, as in this, the remedy sought was an equitable one, cognizable only in a Court of Equity, wherever the distinction is made between courts of law and equity.

Second.—Should it be considered that a writ of error will lie in this case, then it is submitted that no question is raised by the record in this case.

There is not a single exception in the case taken by the plaintiff in error.

A bill of exceptions appears on page 91, but it contains only exceptions by *the defendant in error.*

The judgment itself is a mere dismissal of the petition, with costs, which may have been rendered without deciding or adjudging any question which this Court has jurisdiction to review.

Third.—The exaction of these sums from the plaintiff, as a wharfage or levee due, as compensation for the conveniences afforded him by the levee and wharf, is constitutional.

The question here raised is not *the abstract one of the constitutionality* of this ordinance, in the length and breadth of its terms.

It is simply whether *the act* done by defendant, as shown in this record, and assuming it to be justified as between plaintiff and defendant and the State of Louisiana, is *an act* prohibited by the Constitution of the United States.

It is not whether any *other act* which the State Courts might hold to be justified by the ordinance would be an act prohibited by the Constitution of the United States.

It is not whether *this act*, done by this defendant, as shown in this record, is justified by the ordinance.

That is a question exclusively for the State Court.

Were this a writ of error, or appeal from the United States Circuit Court, this Court might then properly entertain and decide the question whether the act done in this case, *i. e.*, the exaction of certain dues for wharfage, was an act justified and authorized by the ordinance.

On this writ of error to the *State Court*, it has no jurisdiction of any such question. Its sole jurisdiction is to determine the repugnancy to the Constitution, Treaties or Laws of the United States, of the State Statute or authority in respect to its otherwise justification of the act done.

Jackson *vs.* Lamphire, 3 Peters, 280.
Watson *vs.* Mercer, 8 *id.*, 88.
McBride *vs.* Hoey, 11 Peters, 167.
Grand Gulf, &c., Co. *vs.* Marshall, 12 How., 165.
Michigan Central R R. Co. *vs.* M. S. R.R. Co., 19 How., 378.

Whether, therefore, the Court below erred in holding that this ordinance, aside from its constitutionality, justified the exaction of wharfage dues, is not reviewable in this Court.

The question before this Court is the same as if the defendant had justified under a custom, immemorial usage, or any other form by which the sanction of the State sovereignty for the act might be shown.

The question for this Court is: Is the authorization of *this act* by the State sovereignty unconstitutional? Let us, then, see precisely what is the act done.

The plaintiff charges that defendant has "exacted "from him $3,360 for the privilege of landing and "mooring his vessel at the port of New Orleans un- "der municipal ordinances enacted to enforce the "payment of said sums," (p. 1).

The ordinance alleged is: "From and after the passage of this ordinance, the levee or *wharfage rates* "on ships * * * steamboats, * * * shall be fixed as "follows (Petition, p. 2).

The defendant, answering, says: "That defendant was authorized to impose *a wharfage charge* for keeping the wharves in a proper condition for the safe and expeditious loading of merchandise; that defendant did so impose a certain amount *upon all vessels loading and unloading at the wharves aforesaid;* that the amount collected from plaintiff was for levee or wharfage dues arising from the use of said wharf," (p. 8).

The ordinance put in evidence is on pages 20–21, Doc. A. C. No. 640. Its title is "An ordinance to regulate the levee dues *and wharfage* on ships and vessels arriving from sea, and on steamboats, flatboats, etc., arriving at the port of New Orleans."

The ordinance is divided into three articles, affecting respectively sea going vessels, steamboats and flatboats.

In the first the language is, "levee *or wharfage* dues." In the second and third the language is, "levee dues."

Evidently the language is intended to be synonymous.

A receipt, Doc. A. D., p. 21, is headed, "*wharves and levees*," and receipts for levee dues.

Now, the testimony of the plaintiff himself shows that the wharf at which he landed and for which he paid these sums, was "very good," (1st answer, p. 84). That he had landed at foot of Canal street, (p.84), the very best wharf in the city, and which always gave a full equivalent for the dues charged. (Deposition of Bell, p. 90, 91.)

There is no other evidence on this point. True, the plaintiff claims in his petition that the city was bound to keep the levees in order, and did not, and claims damage therefor, and in the depositions of himself and Mr. Leathers, some very loose evidence on that point seems to have been taken (p. 83, 85, 87).

The question, however, of the city's liability on that point is certainly not reviewable here.

The act done, then, seems clearly to be this: That the City of New Orleans has exacted from the plaintiff certain wharfage dues for landing his vessel at a good wharf, built and kept in order by the city; that these dues were levied according to the tonnage of the vessel; that the act was done under an ordinance which the State Supreme Court has decided authorized it. The question then is, is the authority to do that act unconstitutional? The section of plaintiff's brief devoted to the construction of the city ordinance may have been very appropriate in the State Court, but it is simply irrelevant here. If it shows anything, it would show that the city had attempted to impose a wharfage tax by another name, and to evade the State law of 1843. If it be an evasion the State Court has sanctioned it, and this Court, as we have seen, cannot review it.

Now, that the authority to levy this wharfage due is not unconstitutional we have first the authority of the counsel for the plaintiff in error.

On page 3 of his brief (that of Mr. King), he virtually concedes the validity of a wharfage tax.

He claims that this is not a wharfage tax, because the ordinance levies it for landing in any part of the port, even where there are no wharves.

Our answer to that, at this place, is, that the question whether the ordinance is unconstitutional on that ground can only be raised by the owner of a vessel which has been taxed for landing where there were *no wharves* It cannot be raised by this plaintiff, who has paid wharfage dues for landing at a good wharf.

In the case of Steamship Co. *vs.* Port Wardens, 6 Wallace, 31, "There were no services and no offer to perform any" (p. 34). Suppose the services had

been rendered at request of the Company; could it then have raised this question?

In State tonnage tax cases, 12 Wall., 204, there was no pretense of any compensating service, either in fact or in the law. It was the general tax for general purposes.

In Cooley *vs.* Board of Wardens, 12 How., 314, could the question have been raised by a vessel that had employed and been served by a pilot?

In Gibbons *vs.* Ogden, could the question have been raised had Gibbons been running his boat between New York and Albany instead of New Jersey and New York, merely because the Statutes of New York complained of covered by their terms the case of a boat run between New Jersey and New York?

The case of Spooner *vs.* McConnell, 1 McLean, 337, is similar in principle.

The complainant was a riparian proprietor on a navigable river above a fall. The defendants, in constructing a canal, were about to build dams across the river, thus obstructing its navigation. The complainant applied for an injunction, alleging that he was a citizen of the United States and had a right to navigate the river, and that the dam would be an obstruction. The Court said that it did not sit to determine abstract right, but concrete cases. That it not appearing that plaintiff was engaged in navigation, his abstract right to engage in navigation, if he chose, was not sufficient to enable him to file a bill for relief.

Thus the question that plaintiff in error would raise is an abstract one, not raised by the parties to the pending litigation.

As to the question that is raised in this record, whether the levy of this sum as compensation for

services actually rendered is constitutional, we have not only the concession of the plaintiff in error, but the uniform practice of State and National Governments.

It is believed that there is no port in the United States where it is not done.

2d Hoffman's Laws relating to the City of New York, Ch. 93, p. 860, § 10; Laws 1860, Ch. 254, § 1.

In Cooley *vs.* Port Wardens, 12 How., 314, this Court said: "Imports and duties on imports, ex- "ports *and tonnage* were then known to the com- "merce of the civilized world to be *as distinct* from "fees and charges for pilotage * * * as they were "from charges *for wharfage* or towage or any other "local port charges *for services rendered* to vessels "or cargoes."

To say that this is a "levee due," does not aid the matter.

The fact remains that the dues were collected for *wharfage services*, "and certainly it is the thing and "not the name which is to be considered." (12 How. 314.)

Benedict *vs.* Vanderbilt, 1st Robertson, (N. Y.), 194, is in point. It is cited and approved by this Court in the State tonnage tax cases, 12 Wallace, 220.

But even if the question were raised by one who had not used the wharf, but had landed at a place in the port where there was no wharf, the ordinance would be constitutional on the same principle on which half pilotage and harbor master dues were sustained.

Cooley *vs.* Port Wardens, 12 Howd.
Benedict *vs.* Vanderbilt, 1 Robt.

The wharves are built and offered to the commercial public. They are for the benefit of commerce.

and it is fair and just to require all vessels that frequent the port to contribute to their support.

Moreover, the fact disclosed by this record is, that the wharves are co-terminous with the city banks, and that on the whole line the levee has been made and prepared for commercial use (p. 89); in other words, the city, at great labor and expense, constantly rendered necessary by the eternal washings of the river, has furnished suitable landings along the entire front of the city, for all vessels arriving at the port of New Orleans. (Document S, p. 89.)

The same question was considered in First Municipality *vs.* Pease, 2 Louis. Ann., 538.

The action was brought to recover wharfage dues under an ordinance somewhat similar to this, "for mooring in any part of the limits of the municipality." The plaintiff recovered, and the judgment on writ of error to this Court was affirmed.

The case would seem to be conclusive.

Fourth.—Evidence that the sums exacted were greater than the amount disbursed for the purpose of building wharves and keeping same in repair, is inadmissible on the question of constitutionality.

In McCulloch *vs.* Mayland, 12 Wheaton, 430, this Court has said: "We are not driven to the perplexing enquiry so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power?" And in Municipality No. 1 *vs.* Pease (before referred to), 2 Lou. Ann., 542, the Court said on the precise point herein: "The government of each municipality is charged with the administration and po-

"lice of its portion of the port, the preservation of "the levee, as well as with its own financial affairs. "The authority delegated to them for the former "object is a portion of the political power of the "State, and its exercise appertains to the public order "and involves the safety of the city in certain seasons "of the year. The reasoning of the Chief Justice "in the case cited" (McCulloch *vs.* Mayland), "may "be applied to a certain extent to the case under "consideration. The Government of the Municipality has determined that the rates of wharfage "are due as such; and from this, the State has not "dissented. The responsibility of the act rests with "the Municipal Government. The consequence of "the interference of the judicial power *in the details "of its finances* can be readily foreseen. If it be "appealed to in cases in which the amount of its "imposts, taxes or dues are drawn in question, and "should exercise its authority in matters of detail, "or those which may be considered as administrative, "it is obvious that the administration of municipal "affairs must be arrested unless the judicial power "took upon itself the responsibility of conducting "them, and provided against the consequences of its "decrees.

"It would seem, therefore, to be true that within "a certain range, which, however, it is not easy to "define or limit where there is an acknowledged "right, which is necessary for the performance of a "public function, and which is liable to abuse, that "the measure of its use and abuse is rather a matter of legislative discretion than for judicial decision; where there is no right, however small the "burden or laudable the purpose to which it is "applied, the judiciary must interfere. If this "wharfage is a tax on commerce, or on imports or "exports, it is unconstitutional, however small the "amount. If it be not *per se* unconstitutional, the "unconstitutionality depending, according to argument, on the unreasonableness of the amount, the "action of the judiciary is brought directly in con-

"flict with the municipal administrative power on "an administrative question, over which it must be "conceded that the City Government is called upon "to exercise, to a certain extent, discretionary "power. The judicial action is put forth in favor "of absolute positive legal rights. They must be "separated by a distinction of demarcation from "those which are subject to the action of other "branches of the Government, the interference with "which must be avoided. Such is, as we under-"stand it, the theory of our system; and upon the "observance of the principle of leaving to each "branch of the Government the performance of the "functions with which it is invested, its success and "durability depend."

Counsel for plaintiff in error seems to take the same view of the jurisdiction of the Court to investigate a matter of discretion (see p. 5 of Mr. Phillips' brief).

Doubtless cases might arise in which a conceded right might be so abused as to become unconstitutional in its abuse.

There is a class of cases where attempts have been made to impair the obligation of contracts under the guise of legislating merely as to the remedy, which well illustrates this.

Bronson *vs.* Knogil, 1 How., 311.
McCracken *vs.* Hayward, 2 How., 608.
Gaulys Lessee *vs.* Ewing, 3 How., 707.

If it appeared in the record that under the guise of a wharfage tax, the city had levied a grossly excessive amount and applied it to general purposes, such a question might possibly be raised.

Even then the remedy of the plaintiff would probably be by bill or information to compel the application of the proceeds of the tax to the purposes for which it was levied.

Att'y Gen'l *vs.* Dublin, 1st Bligh's New Rep., 312.
Att'y Gen'l *vs.* Aspinwall, 2d Mylne & Craig, 613.
Att'y Gen'l *vs.* Eastlake, 11 Hare, 205, 11 Jur., 901

Fifth.—If the evidence is admissible the record does not show that the dues exacted were greater than fairly proper for the purpose of building and repairing the wharfs.

Table F.. p. 22 (plaintiffs' proof), shows wharf revenues from 1852 to 1870—eighteen years—to have been $3,774,082.53. Expenditures same time strictly on account of wharves, $3,576,074.66, making net revenue for eighteen years, $198,007.87.

These expenditures are exclusive of salaries of four wharfingers and four assistants, and of all contingent expenses. The salaries should properly be paid out of the sum.

Benedict *vs.* Vanderbilt, 1 Robert, (N. York), 200.

Plaintiffs' counsel *arguendo*, under oath as a witness, p. 11, objects to the item of $435,390.94 as an expenditure. He says it does not *appear* in the account that these notes were charged as collections when received, (p. 11). We answer, neither does it appear that they were not.

If plaintiff had desired to *prove* that they were not he should have called a witness and examined as to the items of the account. In the absence of that we must assume, what was undoubtedly the fact, that the ordinary system of book-keeping was followed and that the notes, when received, were credited to the wharfage account and debited to bills receivable.

The same remark is applicable to the item of $100,000, objected to by plaintiff's counsel in his argumentative testimony.

The testimony (p. 11) is mere argument, and would be quite as well without as with the oath.

The Court will mark that plaintiff himself puts Table F in evidence.

We do not contend that such fact impairs his right to prove any entry therein erroneous, but we do con-

tend that until some item is *proved* erroneous the table must stand as a whole—must be presumed correct, and that entries are made according to the facts and rights made in pursuance of the system of book-keeping adopted by the city.

By reference, however, to the testimony of John G. Devereux (99 to 101) the table is affirmatively shown correct, and by bringing the account down to the 31st December, 1871, the total excess of expenditures over receipts, from April 12, 1852, a period of nearly twenty years, is found to be $293,423.34; that is, by Table F, as corrected by Devereux, the excess of receipts from April 12, 1852, to April 4, 1870, was $241,920.66 (p. 100).

From that date, April 4th, 1870, to December 31st, 1871, the deficit was $535,344.

Testimony of Devereux and Corkrem (p. 100–101), leaving deficit for whole period $535,344 — $241,-920 66 — $293,423.34.

Clearly *such* spoliations on commerce are unprofitable.

Sixth.—So far as the action seeks to recover money paid, it must fail.

The payment seems to have been voluntary—not even a protest.

It is well settled that in such case it cannot be recovered.

Hills *vs.* Kernion, 7 Rob., 522.
Worsley *vs.* Second Municipality, 9 Rob., 325.
Fleetwood *vs.* City of New York, 2 Sandf., 475.
New York & Harlem R. R. Co. *vs.* Marsh, 2d Kernan (New York), 309.

Seventh.—If we have been successful in showing that these dues were lawfully collected as wharfage dues, it is, of course, a complete answer to all the grounds upon which the unconstitutionality of the authorization of the act is alleged. Tonnage duty, regulating commerce, laws of Congress, free navigation of the river—all equally fall before the simple fact that the sum was collected for wharfage.

In the decision of this case the long acquiescense of the very many parties interested in the collection of these dues should have great weight. For twenty years the city has provided wharves and collected these dues unchallenged until now.

The case of Municipality *vs.* Pease shows that parties were ready enough to litigate and that the acquiescense can only be accounted for on the ground that the tax has practically been a fair wharfage tax, and has been so understood by the commercial community.

Indeed, this very record shows that the plaintiff's feelings are more disturbed by the wrongs inflicted by certain Railroad Companies, in occupying the levee, than by the enforcement of the wharfage dues (p, 84, 85, 88, 91).

Eighth.—Unless the writ of error is dismissed, the judgment should be affirmed.

WHEELER H. PECKHAM,
Of Counsel for Defendant in Error.